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THE REEMERGENCE OF SWEATSHOPS AND THE ENFORCEMENT OF WAGE AND HOUR STANDARDS

ORIGINAL

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST AND SECOND SESSION

ON

H.R. 6103

TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938 TO PROVIDE THAT AN EMPLOYER WHO VIOLATES SECTION 6 OR 7 OF THAT ACT SHALL BE LIABLE TO THE EMPLOYEE INVOLVED FOR THREE TIMES THE AMOUNT OF WAGES INVOLVED IN THE VIOLATION, AND FOR OTHER PURPOSES

HEARINGS HELD IN WASHINGTON, D.C. ON MAY 19; LOS ANGELES, CALIF., JUNE 29, 1981; NEW YORK, N.Y., APRIL 26; AND WASHINGTON, D.C., MAY 12, 1982

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THE REEMERGENCE OF SWEATSHOPS AND THE ENFORCEMENT OF WAGE AND HOUR STANDARDS

TUESDAY, MAY 19, 1981

House of Representatives,
Subcommittee on Labor Standards,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2261, Rayburn House Office Building, Hon. George Miller (chairman of the subcommittee) presiding.

Members present: Representatives Miller, Burton, Clay, Williams, Ratchford, Kildee, Erlenborn, Fenwick, Roukema, and Johnston.

Staff present: John Lawrence, staff director; Michael Goldberg, counsel; Dianna Cregger, executive secretary; Beth Buehlmann, minority legislative associate.

Mr. **Miller**. The Subcommittee on Labor Standards of the Committee on Education and Labor will come to order.

The purposes of the hearing this morning are to examine the reemergence of the sweatshop and also the enforcement of the wage and hour standards within the garment industry.

On May 4 of this year the Republican Members of Congress and others were treated to a rather unusual press release outlining actions by the Secretary of Labor and his proposals to deal with the problems of sweatshops and labor law enforcement based upon his experiences in the raid in which he was involved in New York.

The press release reads:

> The drunk on the trash-strewn sidewalk barely lifted his head as the van pulled in front of the loft building in Manhattan's Chinatown. Crouched inside the van, Secretary of Labor Raymond J. Donovan and a team of his wage and hour compliance officers were about to investigate sweatshop working conditions in the garment factories above.
>
> It was early on an April morning and the Labor Secretary was about to see for himself the conditions that were later described as "a national disgrace in the shadow of the Statue of Liberty." The Donovan compliance officers and Chinese-speaking interpreter bypassed the broken elevator and raced up the stairs. Then they fanned out on two separate floors of the building. It was time to go to work investigating the alleged violation of the standards involving child labor, minimum wage and recordkeeping abuses.

It goes on to cite how they discovered a 10-year-old girl working in the factory and a 90-year-old woman hard at work. "She was so happy with her employer that he would hire her at her age," Donovan reported. "She gets a dollar an hour." He went on to state, "I am saddened by this experience and I am angered about it," and he vowed to keep the enforcement pressure strong.

He said, "The unions and manufacturers will have to act. Congress will have to put more teeth in the law."

Then it concludes:

> Meanwhile, the sewing machines whirred on in Chinatown as the drunk nodded on in the street below. But there was one invisible difference—the bent-backed woman in the sweatshop had found a new and powerful friend.

That was issued on May 4, apparently discussing a raid, as I said, that took place in April.

The reasons for these hearings are that, as chairman of this subcommittee, I, for one, believe there is an inconsistency between the statements that are suggested in the press release and the facts made in the press release, and what this new and powerful friend did on behalf of people working in substandard conditions, because on May 5 the Secretary published in the Federal Register a complete revocation of the industrial homework rule.

On a fast-track basis, this Secretary set aside 40 years of labor law, of labor-law protections for people who have been victimized by unscrupulous employers. He swept aside an act supported by eight Presidents, Democrats and Republicans alike, and he swept aside in the sweeping action of his, without so much as a hearing on this proposal, 40 years of labor law.

I think the purpose of this hearing ought to be to determine exactly how this is consistent with the actions that the Secretary has described as a disgrace, and how can this be consistent with those other answers when, in the minds of most experts, the actions taken by the Secretary will, in fact, proliferate new violations of the law, will make enforcement even more difficult, will increase the number of places needed for inspection for enforcement of the law, and at the same time how can this new and powerful friend in high places endorse the cutback within the enforcement agencies of the Department of Labor who are to oversee this law?

I think those are some of the questions that this committee should ask and should try to determine how this decision was arrived at, the processes by which it was arrived at, why the process has been speeded up, especially in light of the fact that there appears to be very little evidence of support for this proposal.

To that end, today we have asked the Secretary of Labor to testify before this committee. His initial response was that it would be inconvenient, that he has scheduling difficulties. We then offered to make any day that was convenient to the Secretary available for the purposes of testifying before this committee, and we were told that apparently no day would be convenient during the comment period on these proposals.

I am disappointed at that. I think that the workers that the Secretary so eloquently said should be protected should be disappointed at that. But we have instead representatives of the Department of Labor who will be our first witnesses today.

[Opening statement of Congressman George Miller follows:]

OPENING STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON LABOR STANDARDS, MAY 19, 1981

This hearing is going to examine the re-emergence of the scourge of the American Industrial system, the garment sweatshop, and recent actions of the administration which will encourage the proliferation of sweatshops.

Most Americans believe that the scenes of turn-of-the-century sweatshops have long since been relegated to history books. The "Factory Girl," the Triangle shirtwaist fire, the visions of young children and immigrant women slaving for meager wages in cramped and dangerous rooms were tragedies of the early days of American industry.

Today, sweatshops are flourishing in the needle trades. Throughout this country, and particularly in the garment centers like New York, Los Angeles, and San Francisco, tens of thousands of men, women and children endure the most outrageous and illegal exploitation.

According to one investigation, 83 percent of all firms in California in 1978-1979 were guilty of violating the minimum wage and overtime provisions of Federal and State law. Recordkeeping violations were an astounding 95 percent.

The 1980 Federal task force in Los Angeles recorded similar patterns of violations—78 percent wage and hour, and 95 percent in recordkeeping. That task force found that over $650,000 was owed to 1,372 workers.

The administration has promised to enforce the law more strictly, and has conducted high publicity "raids" on sweatshops, and has set up task forces in several cities. Secretary Donovan has been "saddened . . . and angered" by his investigation, and promised to propose legislation "to put more teeth in the law."

All rhetoric. Far from combatting sweatshops, the policies of this administration will render it "nearly impossible" to enforce the law to protect garment workers, according to Labor Department experts.

The administration has set up short-term task forces, but has slashed the permanent investigatory and enforcement staff of the employment standards administration, with the heaviest cuts targeted for the sweatshop capitals of New York and Los Angeles.

The administration has promised tougher enforcement of the law. But it has proposed to eliminate the homework restriction without enforcement will be futile.

The administration vows that its "primary concern is the protection of workers from the illegal payment of subminimum wages" and promises a "vigorous enforcement program." But, in fact, this administration has proposed a series of regulatory and administrative changes which would make enforcement a hollow threat.

Instead, we have been treated to political theater: Secretary Donovan, according to one of his department's press releases, crouched inside the van * * * it was early on an April morning * * * it was time to go to work.

Together, with his compliance officers "and their Chinese-speaking interpreter," Mr. Donovan bypassed the broken elevator and raced up the stairs. Then they fanned out.

The Secretary found what department and state task forces are all too aware of: Little Children and aged adults working for grossly inadequate wages, without records of their work hours, in dingy and dangerous conditions.

Secretary Donovan spent less than an hour in Chinatown. Tens of thousands of workers will spend years eking out a living in these sweatshops.

The Department's Press release of May 4, 1981, describing the Secretary's raid is a masterpiece of prose. It concludes—

Sewing machines whirred on in Chinatown, as the drunk nodded on in the street below. But there was one invisible difference. The bent-backed women of the sweatshops had found a new and powerful friend.

"Invisible" difference, to be sure. At the same time the department was issuing this melodramatic script, The Secretary was signing off on his decision to revoke the 40-year homework restriction in the garment trade. With that enforcement tool gone, we can be quite certain that the sewing machines will continue to "whirr on" in tens of thousands of sweatshops and homes throughout this country.

Who called for the revocation of the homework rule? To my knowledge, the legitimate garment manufacturers have not called for its elimination. In fact, we will hear today that major manufacturers strongly object to the Secretary's action.

The unions which represent tens of thousands of garment workers do not favor its elimination. In fact, they were not even consulted before this drastic change was made.

Enforcement experts were not consulted. I invite the department to produce individuals or studies which could indicate, as the Secretary has claimed, that elimination of the homework requirement will result in improved enforcement capabilities.

Even the ski hat knitters in Vermont, so far as I am aware, sought only to have a few hundred home knitters exempted from the restriction, a procedure which is permitted under current law. These knitters did not advocate its wholesale elimination.

Now, of course, the sweatshop does have its proponents.

Milton Friedman, for example, fondly recalls that his parents labored in a sweatshop, an experience he would like current generations of immigrants to also endure. "A [sweatshop] gives them a chance to get started," he said.

Barron's magazine went further in its article, "In Praise of Sweatshops: Everyone Should Have the Right to Work." Acknowledging widespread violations, Barron's recommended repeal of the law, including the homework requirement. The sweatshop is "Unlovely, to be sure, but a monument to freedom of choice." Canadian economist Walter Block described sweatshops as "A capitalist act between two consenting adults."

An undereducated, underskilled, usually illegal worker is compelled by economic desperation to work under intolerable, less than substance conditions, abused and unprotected from the most fundamental forms of industrial exploitation, and these learned gentlemen see only a voluntary association between "consenting adults."

Why should someone consent to working 60 hours a week for $40 in the United States in 1981? Why would someone consent to working in cramped, unheated, unair-conditioned hovels? Why would someone consent to risk his or her life in a barricaded storefront, behind locked grates, in rooms strewn with vermin droppings, with no breaks, no bathroom facilities? Where is the equality in that relationship?

Perhaps Secretary Donovan does not share the views of Dr. Friedman and Barron's. But the practical effect of his decision will be the same: The resurgence of sweatshops and the widespread exploitation of garment workers, this time with the active sanction of the Federal Government. That would be a tragedy of monumental proportions.

If the Secretary is serious about eliminating sweatshops, there are some very important steps that could be suggested, and I will be anxiously awaiting his promised legislative recommendations. In particular, I would hope that the administration will support a broadening of the "hot goods" provision allowing the seizure of illegally manufactured items involved in inter-state commerce.

I would also hope that the administration will support much stronger penalties against employers who exploit their workers, such as treble payment of back wages to the Government if the employee cannot be located. I also believe that the responsible employer, not the taxpayer, should bear the cost of searching for the worker who is owed back wages.

These kinds of changes would provide the capacity for the Department to enforce the law, and the incentive for employers to meet their legal obligations to their employees.

I want to stress that I believe that legitimate manufacturers and contractors will support these kinds of changes, just as they support the homework restriction today.

This hearing will provide us with the background we need to pursue this subcommittee's broader investigation into sweatshops in the garment trade and enforcement of fair labor standards generally. I am very pleased to have a distinguished and broadly representative group of witnesses today to assist us in beginning that effort.

Mr. **Miller**. Mrs. Roukema, do you have a statement you would like to make?

Mrs. **Fenwick**. I have.

Mr. **Miller**. Excuse me. Mrs. Fenwick.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

I am very happy that you are having this hearing, Mr. Chairman, and I think it is most appropriate. In my State, indeed, I proposed, and it was adopted, legislation in this field and where there are handicapped people so certified by the Rehabilitation Commission, special arrangements can be made for homework.

It is indeed, I think, a dangerous field and certainly any change would have to be very carefully considered. However, I would also like to say that before I was in my State legislature I worked in a publishing house which was intimately concerned with the apparel industry and the importance of good, strong unions in those industries provided not only a protection for the worker but also a protection for the honest manufacturer. The sweatshop conditions that the Secretary was referring to are a wholly other question, it seems to me, apart from homework.

How is it possible that we still have, contrary to law, a 10-year-old child and a 90-year-old woman working in the garment industry? How is it possible that in other places in this country we have substandard wages and that sometimes the wages are checked and the substandard working conditions are not?

Something is happening that we are going to have to pay some attention to.

I think the Secretary was very right in going to the shop as he did to investigate the working conditions. I hope to get in touch with the union and see what can be done in addition to the Secretary's visit. That is one thing. But what followup is there? What are we going to do about these shops that apparently are proliferating all over the country, where people are not being treated according to law?

So, I think we have two things: We have the changes in regulation which—and I agree with the Chairman—have to be very carefully considered before any changes are made.

I think that we have a separate issue which I am sure the Chairman will bring up, and I hope we will discuss the sweatshop problem today; I hope we will hear something about that, in addition to the regulations. Both are important. One is an existing condition which absolutely, it seems to me, has to be addressed, and vigorously.

I worked for Conde Nast publications and Vogue magazine, so you can imagine how many manufacturers we dealt with during those 14 years. Those unions saved good companies when they were on the rocks and up against fly-by-night sweatshop competition. We know what a good union can do. I never wore a dress without a union label; I would ask to see the label before I bought the dress. It was so important in those days that we should have that kind of cooperation between the industry, the unions and those who were in the business of publicizing these things.

So, I am very happy that our chairman has called this hearing. I am sorry for such a long statement, but you hit a raw nerve here.

Mr. **Miller**. I think we have.

I also want to state for the record that Congressman Jeffords has asked to submit some materials for the record:

[The prepared statement of Congressman James Jeffords follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 2, 1981.

Congressman GEORGE MILLER,
Chairman, Subcommittee on Labor Standards,
House Office Building.

DEAR MR. CHAIRMAN: Enclosed is a copy of the testimony and supplementary materials that I would like included into the record from the Labor Standards Subcommittee hearing on May 19. I appreciate your consideration of this material and look forward to working with your committee on a resolution to this problem.

Sincerely,

JAMES M. JEFFORDS.

Enclosures.

PREPARED STATEMENT OF HON. JAMES JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

DEAR MR. CHAIRMAN: As members of the Education and Labor Committee, we are all familiar with the history of the Fair Labor Standards Act passed in 1938. We hail that act as one which offered for the first time a national minimum wage, a 40 hour workweek with provisions for overtime and clear guidelines governing child labor. The Honorable Richard Welch noted on April 21, 1938 during Congressional discussions on this legislation ". . . Mr. Chairman, the wage and hour bill now under consideration is one of the most humanitarian measures ever considered by Congress. Its purpose is two-fold—it will bring relief to several million underpaid, underfed, and underclothed workers, and it will eliminate the evils of child labor." Shortly thereafter regulations were enacted which ultimately lead to these hearings. Those regulations, entitled "Employment of Homeworkers in Certain Industries", 29 CFR Section 530, prohibits home work in seven industries (the women's apparel industry, the jewelry manufacturing industry, the knitted outerwear industry, the gloves and mitten industry, the button and buckle industry, and the handkerchief industry) without a certificate which only can be obtained if (1) one is aged, physically or mentally disabled, or caring for an invalid, (2) was engaged in industrial homework prior to a certain date in 1941.

One need only review the incidents of abuse or possible abuse of the minimum wage law to understand why such regulations were necessary in 1942, and may still be necessary today. A study conducted in 1934 by the Industrial Home Work Division of the Bureau of Women and Children, Pennsylvania Department of Labor and Industry notes . . . "the industry with the longest prevailing homework hours is the hand-knit women's dress industry. In 1935 its homeworkers had medium hours of 48 a week, half of them working longer and half of them working shorter hours. Sixty-five percent of those homeworkers were employed longer than the 40 hour week specified by the Knitted Outerwear Code. Moreover, the industry was responsible for 42 percent of the Women's Law violations found in 1934 and for the most extreme cases of long weekly hours. One woman said she knit for 80 hours a week and another that she worked for 77 hours a week." The report further stated ". . . the lowest median hourly earnings in 1934 were in tags and hand knit infant clothing of which the median wage was six cents. Again small wonder why the regulations were implemented, yet inconsistencies did exist, the next lowest median wage was the metal products industry, yet this industry was not included in the list of seven prohibited industries. The largest median hourly earnings found in 1934 (20 cents) was in the machine knit branch of the knitted outerwear industry, the next highest was the cigar manufacturing industry, but again inconsistencies prevailed for the cigar manufacturing industry homeworkers were not required to meet the requirements of the regulations under review. Are we to assume that only employers in those seven prohibited industries would exploit their employees?

We have seen no basic change in these regulations since their original inception to reflect the wide variety of potential job opportunities which can be created in one's home. No mention is made of the persons who stuff envelopes, type correspondence, fold and insert circulars and operate computer terminals. Apparently their employers would not consider paying them less than the minimum wage, or claiming the employee did less work then they actually did, or have them work for more than forty hours without the benefits of time and a half for overtime. It appears that only persons, according to the Department of Labor present regulations, owning knitted outerwear ski hat businesses would violate the intent of FLSA, but not the manufacturers of baseball hats, that only owners of boot and buckle companies would circumvent the law, not the owners of handbag corporations. This is a very foolish assumption.

A 1958–59 report of the Department of Labor, Section D entitled Distribution of Homework by Type of Operation, noted that "over 7,000 homeworkers were typists and they accounted for 52 percent of those doing machine work. Another 36 percent of the machine workers did sewing or cutting and sewing. But the typist is not required to prove that he or she cannot adapt to a work environment outside their home because of age, physical or mental disabilities, or is caring for an invalid. A typist has the right and privilege to decide to work at home and care for a minor child, while a person in the prohibited seven industries is not allowed this right. When one notes that a child can be cared for in federally funded day care centers, thereby providing the parent with the opportunity to work outside the home, they forget that available today to persons caring for an invalid are the services of home health agencies and nursing homes, the cost of which can be covered by Medicare and Medicaid, two programs not in existence in 1938. But one would consider government heartless if it suggested that in order to work outside one's home, one should place their elderly parent in a nursing home, if that was not their choice. Why do we not have the same compassion for a parent wishing to stay home with a child and supplement the family income by working in industries in which women have traditionally been trained to excel.

On April 29th, Secretary Donovan of the Department of Labor wrote to inform me of his plans to withdraw these regulations. I commend him for his bold action. We have come a long way since the 1930's, we now have a public fully aware of a minimum wage law and a forty hour week. Of course there are still abuses of the law, many of them tied to the problem of illegal aliens, and it is to these abuses that I raise my concern over the total elimination regulations aimed at safeguarding the minimum wage in these seven industries. I, on one hand, cannot stand by while individuals within my district are precluded from an opportunity to earn a living because the rural nature of their surroundings does not provide them with an opportunity to work outside their homes, and earn a living wage. With escalating costs of private transportation, the lack of public transportation, and the inavailability of satisfactory child care centers within a close proximity of their homes they are faced with the very real prospect of earning less than the minimum wage if they work outside their home. One fact came through during the discussion of the FLSA by Congress in 1938 and that was to guarantee an individual a decent wage to bring home. But, neither can I reconcile myself to the elimination of regulations which are not replaced by some form of protection for those individuals who reside in urban America and are still the subject of abuse 40 years plus after the passage of FLSA.

We should follow the lead established by the 96th Congress with the passage of the Regulatory Flexibility Act and attempt to come forth with regulations aimed at assisting those who are presently being exploited. I would suggest that we require all employers in the prohibited industries obtain a certificate for each employee of theirs who is working off the business premise. No employee would be required to prove that they are either aged, mentally or physically disabled, caring for an invalid, or employed in their home before some date in 1941. But rather the employer would simply request from the Department of Labor certificates for the number of individuals he wishes to employ in their home, the certificates would be in triplicate, a copy for the Department of Labor, a copy for the employer, and a copy for the employee. The Department of Labor would then possess a list of all homeworkers in the seven industries. The certificates would be renewable after one year. A homeworker would receive a certificate for each of the industries they were employed in, even if they were employed in several industries for the same employer. At the present time we know there are individuals working in their homes who have not met the requirements set forth in the regulations in question. They have not, as the homeknitters in Vermont attempted to do, established themselves as independent contractors, rather they are made up of persons easy to exploit, persons unfamiliar with our language, illegal aliens, persons not understanding that government was meant to protect them. If they should have an inkling that they are not being paid the proper wage who do they go to, surely not the Department of Labor because they are neither aged, physically or mentally handicapped. They live in a very gray area, never certain of what their rights are yet realizing that they may very well be in violation of some federal law. And how without their complaints do we truly know who is being exploited. We have seen regulations in place for over 40 years, yet abuses continue, the time quite obviously is here to come forth with other solutions to the problem.

Again, let us not lose sight of who we are trying to protect. We could establish stiff penalties for any employer who has individuals working for him without a certificate. Employers are now required to maintain accurate records for the purpose of paying federal, state and local taxes and because of the complexity of our tax laws and the difficulty in enforcing any law, we have not allowed the purchaser of goods to pay the sales taxes owed on the goods directly to the government, we have not required the employee to pay his own F.I.C.A. directly to government, the responsibility is borne by the business establishment. We might find complaints from business about more forms for federal purposes, but the present system is obviously not working and we need to establish a program that protects workers in this country.

We must deal with the problem were it exists, the profile described above differs sharply from the Vermont cottage industry worker represented in the person of Luella Breen of Shaftsbury who remembers her mother working in their home at a sewing machine making socks for our Navy, our Army and the American Red Cross during the First World War. It was a logical extension of her independent upbringing that when the time came to supplement her income as she neared her retirement years that she should consider following in her mother's footsteps. She attended workshops conducted by the Small Business Administration on how to establish oneself in business. She purchased a knitting machine, worked at her leisure, established herself as an independent contractor in the eyes of the Social Security Administration and in the eyes of the Internal Revenue Service only to discover that the Department of Labor had decided that her relationship with the CB Sports Company of Bennington, Vermont was that of an employer-employee relationship. Luella is truly representative of the employee who no longer can work because government is protecting her. I think the time has arrived when we should take a hard look at who we are protecting and from whom.

The former Commissioner of Labor and Industry for the State of Vermont, Joel Cherington noted that during his tenure he received no complaints from individuals working within the cottage industries dealing with unfair labor practices. Mr. Cherington would have judged the cottage industry worker to be an independent contractor and not within his jurisdiction, but he was never called upon to make that determination for within the State of Vermont there appears to be no evidence of exploited cottage workers. On the other hand the Commissioner of Labor and Industry from the State of Massachusetts noted at hearings held in Burlington, Vermont in January of 1981 that when one saw women in the Chinatown district of Boston carrying grocery bags, there bags were not filled with groceries, rather they were filled with homework taken from factories where they were employed. Naturally this story stirred my interest as to why there were no lawsuits pending in Boston against firms which might be in violation of the homeworkers' regulations. My questions were quickly answered by the Department of Labor when it was noted the abuses appear to be taking place in the factory. It appears physically impossible to the Department of Labor that these workers were carrying work home, for the homework in question is the heavy outerwear industry.

But leaving nothing to chance, DOL staked personnel out around the factory's exits wondering if goods were being brought to individual homes by company vans. This did not appear to be the case. It appears to be a matter of employees working within the factory for longer hours then were being reported. DOL has required a more extensive recordkeeping process. Again, abuses are there, let us deal with them. The women in the factory in Boston are not being paid the minimum wage, the worker in Vermont is. Yet, who finds themselves unemployed, the Vermont homeworker. The employees in many areas continues to be exploited, in this regard FLSA has failed. Representative Allen in 1938 further noted ". . . this law will further aid industry by furnishing industry those customers I described a few moments ago . . . the laborer will have more money in his pocket . . . if we are going to pull ourselves up from this depression, we must provide American businesses with customers, customers with buying power." What the present regulations appeared to have done has disenfranchised one group of our citizens from the work force of this country. Mr. C. B. Vaughan, President of CB Sports of Bennington, Vermont best expressed his sense of frustration when he testified at DOL hearings, he explained the history of his company, he told of a reputation for a fine quality homemade ski hat. This article became the base for a larger outer skiwear industry.

Mr. Vaughan wants a handmade article, it is the trademark of his business. He will get that product, if not in Vermont or other parts of this country, then in Taiwan, Hong Kong or Singapore. He made these statements not to threaten the Department of Labor, but rather to emphasize that he had considered the mass production of a ski hat within a factory and discounted that option for he wanted CB Sports to retain its original appeal, even if that meant taking thousands of dollars out of the American economy and placing orders abroad. What we have done is quite the opposite of what Mr. Allen meant he stated "the laborer will have more money in his pocket." In closing I appreciate the opportunity to offer this testimony and I have included a sampling of the testimony and letters from Vermonters which better describe the views of the homeworkers. I would also call on the Chairman to look closely at the entire issue of what constitutes an employer-employee relationship or that of independent contractor. For many years the Vermont homeknitters have operated in what they felt to be a legal and valid relationship of an independent contractor. Valid in the eyes of the Social Security Administration and valid in the eyes of the Internal Revenue Service, but not valid in the eyes of the Department of Labor. We can easily see why our citizenry becomes confused and frustrated with government rules and regulations. We would be making an important contribution to the workers of America, if we would join with other Congressional Committees which have jurisdiction over Social Security laws and Internal Revenue Service legislation and deal with the problem in a forthright and progressive manner.

Mr. MILLER. Also, Senator Leahy sent over a statement for the record.

[Prepared statement of Senator Patrick Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Mr. Chairman, I first want to thank you for giving me the opportunity to testify before your committee and speak on this important matter.

The recent controversy over the homework regulations under the Fair Labor Standards Act is a good example of the complexity inherent in updating and modernizing federal regulations. The problem literally arose in Vermont, where these four-decade old rules almost put an end to our home knitting industry at a time when jobs are very scarce.

I share with the home knitters in Vermont a sense of relief that their useful employment will be permitted to continue, and I'm glad that Secretary Donovan has given early attention to the problem.

The Department of Labor hearings held in Vermont and Washington earlier this year clearly showed that production of knitted outerwear in settled, rural areas on a small scale should be permitted where history has shown no past abuses.

As I said in a letter to Secretary Donovan in March, Vermont's rural economy is such that jobs outside the home for individuals currently engaged in home knitting may not exist or frequently are so far away that travel time and the rising costs of fuel outweigh the benefits of working. A number of Vermont witnesses testified that comparable paying employment is not available to them in their communities. Furthermore, most of the Vermont home knitters are women who feel they must remain at home to care for children or other family members. Day care facilities are often unavailable or extremely expensive. Thus, you can see how important the ability to continue working in their homes is to the individual knitters.

For these reasons I wanted to see changes in the regulations that would recognize these exceptions and provide a secure legal basis for Vermont's home knitters and similar workers elsewhere in rural America. This would be accomplished by Secretary Donovan's proposed changes.

It is important to ask at this time, however, whether revoking all controls over homework in the seven restricted industries is the proper response to the problems raised in Vermont and elsewhere by these antiquated rules. When the homework regulations were first adopted about 40 years ago, they addressed the sweatshop evils as they appeared then. Little attention was focused on rural areas where skills like knitting had been practiced at home for generations and where abuses were unknown.

Forty years is a long time, and everyone will agree that for a regulation it amounts to advanced old age. The regulations need reexamination, but I am concerned about their abrupt elimination.

The purpose of the Fair Labor Standards Act is to eliminate substandard working conditions and to ensure that workers are paid a minimum wage. In the Vermont hearing, the International Ladies Garment Workers' Union raised valid concerns about the effects modification of these regulations would have on the garment and other restricted industries in urban or large industrial settings. And I do not suggest, since the present record is silent, that all rural areas are equally suited to homework without the danger of minimum wage abuses. I am aware, as are the Vermont home knitters, that sweatshops still exist in certain parts of the country.

The hearings in Vermont and Washington were not designed to explore the full extent of sweatshop conditions throughout the nation. Testimony at those hearings responded to the issues raised by the Department of Labor in its hearing notice, issues that focused on the possibility of liberalizing the regulations or making needed accommodations to rural areas. The department's own news release simply said that the "department may eventually modify some homework regulations." Certainly wider involvement in the hearings would have resulted if the department had given any fair warning that it was contemplating abolishing the regulations.

On March 9, 1981, I wrote to Secretary Donovan concerning these matters. In that letter, I suggested that the Regulatory Flexibility Act provides the perfect vehicle for reaching a solution to the homework problem without abandoning part 530. The Act underlines the intent of Congress to tailor federal regulations to the particular needs and characteristics of regulated parties. Hearings in Vermont in August, 1979 on the Regulatory Flexibility Act demonstrated how unfair it is to apply uniform national regulations where there is not a single, uniform, national problem but rather a series of problems altered by differences in size, resources and regional characteristics.

The hearing record to date satisfies me that the present regulations need review and amendment to tailor these regulations to local needs. Elimination is not the only option. The International Ladies Garment Workers' Union has supported an amendment allowing homework in the knitted outerwear industries for hand-crafted and hand-loomed items.

The Department's own notice of the January hearings suggested a change that would "recognize additional circumstances justifying certification, such as child care and other family demands that may tend to preclude factory employment."

The Vermont Legislature in a joint resolution to the Department of Labor suggested that other important criteria were long commuting distances and factory heating costs, both factors that would be relevant in the Northern New England area.

The Vermont Attorney General had submitted a detailed proposal to add a new subpart to Part 530 under which qualifying rural states could operate and manage the homework regulations. Guidelines under the proposal would assure compliance with the Fair Labor Standards Act and at the same time would be sensitive to local conditions and circumstances that now make the application of a uniform, national scheme inequitable.

The Attorney General's program, called the Rural Industrial Stimulus to Employment (or RISE) program, does not simply grant a blanket excption to rural areas but examines the conditions in particular rural settings and permits only those states which qualify under carefully stated criteria to operate their own homework programs. RISE status would only be granted after public hearings that would encourage input from all segments of the labor world and from industry.

There may be other carefully crafted changes that would promote the continuation of homework without threatening the effectiveness of the Fair Labor Standards Act. None of these proposals would require elimination of Part 530 or add to the costs of its administration.

In conclusion, I want to emphasize that I am happy about the prospect of home knitters continuing their work in Vermont. But I am concerned about other workers in Vermont and throughout the United States who may suffer great harm and lose a generation of hard-fought gains if these regulations are entirely eliminated. It is not necessary to completely eliminate Part 530 of the Department of Labor Regulations. Instead, I support the modifications I have outlined—modifications which would correct the problem in the Vermont situation but continue needed protection for homeworkers.

I have attached for inclusion in the record two recent editorials in the May 13, 1981 Bennington Banner and the Washington Post of May 16, 1981. Both editorials call for sensible modification of these regulations rather than abolition.

Mr. **Miller**. At this time we will call the first panel: Mr. Robert Collyer, Deputy Under Secretary for Employment Standards, accompanied by T. Timothy Ryan, Jr., Solicitor of Labor, and Craig Berrington, Associate Deputy Under Secretary for Employment Standards.

Your prepared statement will be printed in the record in its entirety. You may proceed however you desire.

STATEMENT OF ROBERT COLLYER, DEPUTY UNDER SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR, AND CRAIG BERRINGTON, ASSOCIATE DEPUTY UNDER SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS

Mr. **Collyer**. Thank you, Mr. Chairman and members of the subcommittee.

For purposes of identification, Mr. Ryan is to my left, Mr. Berrington is to my right, and I am in the middle.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to appear before you today. I am here on behalf of the Secretary of Labor to discuss the Department of Labor's proposal to repeal the homework regulations and to discuss the Department's plans for enforcing labor standards under the Fair Labor Standards Act, FLSA.

The Department of Labor has a dual purpose in its administration of fair labor standards. We must vigorously enforce these standards to protect the workers, especially those most in need; but we must also reevaluate regulations in order to amend or repeal these which do not serve the objective of the law or create more problems than they solve.

As the subcommittee knows, on May 5, 1981, the Department published in the Federal Register a proposal to remove part 530 of title 29 of the Code of Federal Regulations, the homework regulations. I will discuss first the background of that proposal and the reasons for our action, and then our plans to enforce the FLSA to protect homeworkers. Our intention at this time is to remove the homework regulations unless we receive very persuasive arguments to take another course.

Forty years ago the Department found that homework in certain industries was a threat to maintaining labor standards. This conclusion arose out of a series of public hearings extending from the year 1941 through 1943. The hearings covered the seven industries in which homework was most prevalent and in which violations of the minimum wage and overtime pay requirements were a serious problem.

As a result of the hearings, regulations were issued to restrict the employment of homeworkers in the jewelry, knitted outerwear, gloves and mittens, buttons and buckles, embroideries, handkerchief, and women's apparel industries. This action was taken as an alternative to controlling wage violations in these industries through strong enforcement of the minimum wage and overtime provisions of the act. These industries have remained restricted and no other industries have been added since that time.

The only people who can legally work at home in these seven industries are handicapped or elderly individuals who are unable to adjust to factory work, or people who must remain at home to care for invalids. Authorization to employ such persons at home in the restricted industries is granted by certificate upon application to the Department by employers.

Until the late 1970's there was little apparent public concern regarding the homeworker regulations. Then we investigated a firm using restricted homeknitters in Vermont. A number of news articles and television news shows picked up the story. The public interest generated was tremendous.

In view of the mounting criticism and the many years which had passed since the restrictions were adopted, the Department decided to review the homework regulations.

Following notice and publication in the Federal Register on December 5, 1980, hearings were held in January and February in Burlington, Vt., and Washington, D.C., to obtain information on the current situation in industrial homework and its impact on the Secretary's statutory responsibility "to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed" in the FLSA.

The hearings generated approximately 750 pages of testimony, numerous exhibits, and extensive written comments from around the Nation.

That, in brief, is the background of the regulations.

But what is the real effect of the current regulations?

If a homeworker in a restricted industry does not receive the minimum wage and files a complaint, the remedy provided by the regulations is to deny the complainant further employment, not to assure payment of the minimum wage. Because of this, a homeworker has a choice—get less than the minimum wage or get nothing. The choice is no real choice at all.

Another problem with the regulations is inconsistency in their application.

As an example, Mrs. Smith sews sleeves on men's sportshirts at home. Mrs. Jones sews sleeves on women's sportshirts at home. Mrs. Smith's homework is legal, but Mrs. Jones' work is not. Mrs. Smith can file a complaint and get paid the minimum wage. Mrs. Jones files a complaint and puts herself out of a job.

In many areas of this country factory work is not available. Also, public transportation is not always available where there is factory work. Elimination of the homework regulations can open up job opportunities in many cottage industries and encourage workers to report minimum wage violations without fear of losing their jobs.

Under the existing regulations that cannot happen, since homework employment in the restricted industries is illegal. It would be far preferable to give homeworkers the full protection of the Fair Labor Standards Act, which includes protection against any retaliatory or discriminatory action by the employer. Now, the regulations put us in the position of eliminating their opportunity for employment.

Our review of the homework investigations made over the last several years disclosed that the rate of violations in the restricted industries was not significantly higher than in the nonrestricted industries or for all covered employers investigated.

These are the Department's primary reasons for proposing the removal of the homework regulations.

During the review of the homework regulations the Department considered various alternatives to the complete removal. For example, the Department considered continuing the restrictions on urban homework while permitting homework in rural areas. The Department considered the possibility of allowing homework under special circumstances—for example, where child care in the home is desirable, public transportation is lacking or factory work is unavailable.

Any of these alternatives would add to the present arbitrary distinctions between permitted and restricted employment and considerably increase the regulatory burden. Furthermore, they would limit job opportunities to a much greater extent than the proposal.

Mr. Chairman, the current regulatory scheme simply does not make sense. What does make sense is to pursue a strong enforcement effort to protect the minimum wage for all homeworkers.

The Wage and Hour Division has developed an enforcement strategy that targets homework employment for close scrutiny. The Department is convinced that this will provide protection that the current restrictions do not offer.

Mr. Chairman, you have questioned the Department's commitment to enforce labor standards laws when the administration is proposing budget reductions. The Department believes that getting a handle on Federal spending is essential if we are ever to bring inflation under control. The Department of Labor must share in the spending cuts which were recently approved by the House of Representatives and the Senate.

The American people support the President in these efforts as well as in his proposal to control Federal regulations. To meet these larger goals, some cuts have been proposed in the resources for labor law enforcement. The reductions, however, have been distributed around the country based on the Department's assessment of the need for these resources in particular areas.

With careful selection of priorities and a more efficient and productive enforcement effort, the Department can provide both vigorous enforcement and greater compliance by employers. The Department plans to retarget efforts to assure that they are directed to areas where violations are most likely to occur.

Strike forces have been made an integral part of the enforcement program. This form of concentrated enforcement action by the Wage and Hour Division in special geographical areas and targeted industries has proven to be cost effective and extremely productive. Strike forces in New York, Chicago, and elsewhere revealed serious violations of the Fair Labor Standards Act in factory workplaces.

The Department believes that such strike forces are a good example of the appropriate way to correct substantive violations of the act in contrast to broad categorical restrictions such as the homework regulations.

Violations of the act are unacceptable wherever they occur. We want workers, whether employed in factories or in their homes, to receive the full monetary wages they are entitled to under the act.

Mr. Chairman, I can assure you that we welcome and solicit additional views from all interested persons regarding the proposed removal of the homework regulations. To that end we have given written notification of our proposal to everyone who has expressed an interest in homework.

This concludes my statement. Thank you again for your invitation to appear here today. My colleagues and I will be happy to respond to your questions.

Mr. **Miller**. Thank you for your statement, Mr. Collyer.

For those on the committee who are not aware of it, I will state for the record that Mr. Collyer is new to the Department and newly on board.

I appreciate your appearance this morning.

Mr. Collyer, were you with the Department when the notice was published in the Federal Register?

Mr. **Collyer**. Yes. It was published on May 5. I arrived in the Department on April 29.

Mr. **Miller**. Did you have a chance to review the notice?

Mr. **Collyer**. I reviewed it, yes. I generally agreed with it, based on the information that I had which was available at the time.

Mr. **Miller**. You did not sign the notice?

Mr. **Collyer**. No. Mr. Berrington, I believe, signed the notice.

Mr. **Miller**. Mr. Berrington, the notice states, "After careful consideration of all oral testimony and written comments received as a result of the hearings"—and I assume there you are referring to the Burlington and the Washington hearings—"as well as information that the Department has obtained independently, it is proposed that the regulations be removed."

Based on the oral testimony and the written comments at those hearings, who was it that testified that this proposal should be removed?

STATEMENT OF CRAIG BERRINGTON, ASSOCIATE DEPUTY UNDER SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR

Mr. BERRINGTON. The testimony from individuals actually doing the knitting in various States, I believe—Vermont, Colorado, several other States—had very negative views of the homework regulations.

The testimony, generally speaking, from both organized labor and from most apparel organizations, favored continuation of the regulations.

Mr. MILLER. Did the home knitters testify that the rule generally should be removed or should be removed with respect to their particular situation in rural Vermont?

Mr. BERRINGTON. They didn't solely come from rural Vermont, but they did testify about their personal situations, their personal views, as the regulations affected them.

If the thrust of your question, Mr. Chairman, is whether there was extensive discussion in those hearings of removal of the regulation, as opposed to changes in the regulation, the answer is that most of the discussion, in fact, almost all of the discussion, had to do with changes as it applied to the particular home knitters.

Mr. MILLER. How did the Department deal with that evidence and that testimony?

Mr. BERRINGTON. The Department took that into consideration, to be sure. The Department also has many years of experience with the regulation as it is now, and as Deputy Under Secretary Collyer's statement indicates, we considered various possible changes, amendments, alterations in the current regulation and tried to determine what the enforcement impact and the regulatory impact of any one of those middle points on the continuum would be.

As we have indicated, we want more information in this comment period. If, for example, you look at the question of removal from rural areas rather than from urban areas, as was suggested, there are problems with that that they would have to deal with as an enforcement agency: Is all of Vermont a rural area? Or is all of Vermont except Burlington a rural area? Where do rural areas end and suburban areas begin?

If we are going to remove the homework regulation as it applies to rural areas, would we be driving jobs from the urban areas?

Mr. MILLER. Mr. Berrington, you are dealing with particulars at this point with the issue of the knitters. Your rule applies across the board. It applies in urban areas. Some reference is made in the opening statement to cases where factories may not be available. That does not appear to be the situation in New York City for people living in the city, or in the case of Los Angeles, people working in and around the garment industry. But your rule applies across the board, is that correct, whether transportation is available or not available, whether the factory is available or not available?

I am just trying to determine the process by which the Department of Labor has taken rather isolated testimony and extrapolated from that the basis on which to revoke the entire rule against industrial homework.

Mr. **Berrington.** The point I wanted to make, Mr. Chairman, is that the testimony from those hearings was an important element in the discussions of how to proceed. We were not limited, of course, to the testimony in those hearings. Indeed, the Department is under no statutory obligation to hold hearings prior to proposing a new regulation.

Mr. **Miller.** That is very clear from the action you took.

Mr. **Berrington.** We also took into account prior history and problems in the regulation and our own estimates of the extent to which any particular change in the regulation would be enforceable.

Mr. **Miller.** Did you consult your enforcement agency, your field personnel, about whether or not this would make their job more difficult or less difficult or the same?

Mr. **Berrington.** The decision was made in concert with senior staff people.

Mr. **Miller.** Were your enforcement individuals consulted or people in the field consulted?

Mr. **Berrington.** Our most important people in the Wage and Hour Division who have extensive field operational experience not only were consulted but also were intimately involved in making the decision.

Mr. **Miller.** So, people in the regional offices that cover L.A., that cover New York, that cover El Paso or Miami, were consulted in this process?

Mr. **Berrington.** I am not saying that there was active consultation, because I don't know the extent to which within the Wage and Hour Division there was active consultation with any particular regional office.

We have regional offices across the country. What I am saying is that the recommendation and the options came from the Wage and Hour Division, which is our enforcement agency.

Mr. **Miller.** So that was their recommendation?

Mr. **Berrington.** I will take the responsibility of any recommendations from the Employment Standards Administration prior to Mr. Collyer's coming on board.

Mr. **Miller.** What was the input of the people who are given the job of enforcing the law?

Mr. **Berrington.** They had primary input, and they had primary responsibility for providing the assessments on the current regulations, and also assessments on what enforcement burdens and opportunities would be the outcome of making particular changes.

Mr. **Miller.** What was that assessment?

Mr. **Berrington.** The assessment from the Wage and Hour Division senior staff here was that it would be, quite frankly, a very difficult enforcement regulatory and administrative burden to try to make the judgments between those situations where transportation is available and where transportation is not available, where rural areas exist and where rural areas don't exist, where children are in the household and where children are not in the household.

Obviously, those are points that make it impossible to draft a sound regulation.

Mr. MILLER. Did they describe how they were going to enforce the wage-and-hour provisions with the revocation of the regulation?

Mr. BERRINGTON. We have indeed had substantial discussions and thought about enforcement strategy which, by the way, the Department has never had in the past in regard to homeworkers.

Mr. MILLER. Would you describe for us what that is going to be?

Mr. BERRINGTON. Yes, I will be glad to do that in outline.

First of all, Mr. Chairman, we believe that if homework is not absolutely prohibited in these industries, that there will be more of an inclination by individuals who are being abused by not being paid the appropriate and required Federal minimum wage to report complaints. Right now there is no incentive to do that. By reporting the complaint, the result is that they are put out of the job.

A lot of these people want to work at home; they want to earn the extra money and they need to do so so they don't report.

Mr. MILLER. How did you make that determination?

Mr. BERRINGTON. Because they are obviously doing it.

Mr. MILLER. Where?

Mr. BERRINGTON. I think if you go into New York, as we do day in and day out with our compliance officers, we see people carrying large bags full of the materials.

Mr. MILLER. How did you make the determination that they would call you in if they weren't paid or worked long hours?

Mr. BERRINGTON. Obviously, there are certain assumptions that you draw based on information that you have. The information that we have now is that we have very, very few complaints from people who are working in industries at home where it is illegal to do so.

Mr. MILLER. Do you get a lot of complaints from people working in homes where it is legal to do so?

Mr. BERRINGTON. We don't get a lot, but we get some.

I want to make that one point: We think there is a likelihood of getting more complaints.

Mr. MILLER. That is an assumption. I am trying to determine the basis in fact on which this revocation was made. I am trying to determine how you arrived at that assumption, or how you determined that it is likely that somebody would call the law enforcement agency in on themselves.

You just told me in restricted industries you don't get any calls and in nonrestricted industries you don't get very many calls.

So let us go on to your next assumption.

Mr. BERRINGTON. Mr. Chairman, I thought you were asking me if I would outline the enforcement strategy.

Mr. MILLER. That is right, but the basis of that strategy has to be built on some semblance of facts. So we are looking for the underlying facts for this enforcement strategy to have some meaning to it.

Mr. **Berrington**. Sir, I want to indicate a couple of other elements of that strategy: The second is that where homework is legal instead of illegal—for example, it is legal to sew a man's shirt at home, while it is illegal to sew a woman's dress at home—but where homework is legal, the employer is required to make special note on the employee's records about who is doing homework and how much is being done.

We believe that there will be a greater tendency—how much more we are not absolutely certain—but there will be a greater tendency to report the work done at home where it is not illegal to report it.

So, we believe that by targeting investigations, as we have begun to do, in these small garment manufacturing shops—and a lot of those people who work in the shops work both at the shop and work at home—that we will be able to get more information on what is actually being done at home.

Mr. **Miller**. The second assumption is that you believe that the employer will keep better track of the employment records of the employee who is working at home because it would be legal under your proposal to work at home, they could take the work home? In the legitimate garment industry, according to your records, recordkeeping violations are 95 percent of the inspections.

Now, this is a legitimate worker and legitimate employer, but he is now going to change from that record of violations into a good Samaritan because it is no longer illegal to work at home?

Mr. **Berrington**. No, sir. We think his being a good Samaritan will be directly related to the vigorousness of our enforcement posture.

We have stepped up enforcement and we intend to do that. There must be some way to get a lead, some way to get a handle, on the problem. It is clear now that the homework regulations do not do that, because so much illegal homework is going on and so many people are being paid less than the minimum wage, according to State officials around the country.

Mr. **Miller**. I want to match your assumptions against the record, because in Los Angeles in 1978 to 1981 wage and hour violations were found in 75 percent of the cases, recordkeeping in 93 percent of the cases, labor code in 85 percent of the cases, and compensation in 2 percent of the cases.

Mr. **Berrington**. Yes, sir.

Mr. **Miller**. I just want to match that against your assumption that the employer will do otherwise.

Mr. **Berrington**. I don't have those data in front of me, but those data sound correct.

We are very concerned about the lack of adequate recordkeeping across the board. We have very serious concerns about it and we are giving serious consideration to that problem.

Mr. **Miller**. Why don't you repeal the law requiring it; then you won't have to worry about it, because they will do it then?

Mr. **Berrington**. I don't think that will be one of our recommendations.

Mr. **Miller**. Let us go on with your other assumptions underlying your enforcement policy.

Mr. **Berrington**. Those were the primary ones, combined with continuing targeted enforcement efforts in those areas and also engaging in a substantial effort to inform individuals who work at home, and inform them, obviously, in their own language, of their rights.

Mr. **Miller**. So it is correct to assume that is the enforcement policy you just stated, Mr. Collyer just stated in his opening statement, that the Wage and Hour Division has developed an enforcement strategy that targets homework employment for close scrutiny? That is your policy, that you have a good employer and a person is going to call a raid in on their own home? That is the policy?

Go back over it for us. First, we have employment by people who now have legalized homework that they would not be afraid to call in the Wage and Hour Division because they would not lose their place of employment, because under your proposal it is now legal; is that correct?

Mr. **Berrington**. We think there will be some additional complaints. We also believe that by targeting and continuing to target enforcement of these small manufacturing shops where a lot of people, we believe, although we have limited concrete evidence at this point, are working both in the factory and at home. We believe that we will be much better able to pick up work being done at home when there is not an absolute ban on its being done at home, because when there is an absolute ban, there is an absolute incentive not to report anything at all.

Mr. **Miller**. Let us examine that statement: You believe with better enforcement against smaller places of employment you will be able to better enforce the law; is that right?

Mr. **Berrington**. Yes, sir.

Mr. **Miller**. That is in spite of the reductions in the labor force for the Wage and Hour Division that is envisioned in the current law, you think you will be able to do a better job with fewer people?

Mr. **Berrington**. We believe, sir, that with the people we have, we will do a good job in enforcement of the act.

It is clear that illegal homework, abusing workers, happens now. It has been happening with larger numbers of staff than we will have in the future. Trying to enforce an unenforceable provision is not a very useful——

Mr. **Miller**. You would not suggest to this committee that you don't envision a proliferation of workplaces, do you?

Mr. **Berrington**. I would say, sir, that there will probably be an additional amount of homework done. How much additional amount will be done is hard to tell.

For example, we assume that the State of New York will maintain its current prohibitions. If they maintain their current prohibitions, then the employers will have to deal with those.

Mr. **Miller**. That is also in light of the gentleman who is the director of the concentrated enforcement program of the State of California, who says:

> I have yet to find a homeworker in Los Angeles County, Santa Clara County, San Diego County that has been paid the minimum wage. It ranges from 39 cents to $2.25. I have yet to find someone who has been paid higher than $2.25.

So, even on your assumption, you still have a wage and hour provision problem, and you have proliferated the number of places you have to inspect.

In Los Angeles alone, I think, there are over 4,000 places of employment today with the prohibition on homework and at that same time the Los Angeles area is slated for a 14-percent cut; New York City is slated for a 16-percent cut; and yet in your testimony you say that the reductions, however, have been distributed around the country based upon the Department's assessment of need for these resources in particular areas, and New York, Dallas, and San Francisco are slated for the heaviest cuts?

Mr. BERRINGTON. You asked several questions, sir. I will try to respond to all of them.

As to the statement about the conditions in California, I would have no reason to challenge the statement of the California officials. That statement really points up the real problem; that is, that if it is illegal to do work at home at all, the employer holds that ultimate club over the individual about what wages to pay. He can more effectively ratchet down those wages because the individuals can't complain and have anything result from that complaint, except they will not be able to do work at home in the future.

When you compound that with the fact that some of the people who are working at home, especially in the metropolitan areas like New York and Los Angeles, are either recent immigrants to the United States or who don't speak English——

Mr. MILLER. Or there is a third category—illegal?

Mr. BERRINGTON. Illegal, yes—and have much to be afraid about.

Mr. MILLER. This is a person who is going to call in the raid if they are legal now?

Mr. BERRINGTON. If people are legal, I think there is more chance.

Mr. MILLER. The homework is legal; the status is not legal?

Mr. BERRINGTON. If the homework is legal and the worker is legal, I think there is more of a chance. I wouldn't say—and I hope I have not said—that that is a primary element of enforcement.

The primary element of enforcement is to concentrate the compliance effort in these areas.

You asked another question, about resource levels. We have to distribute resource around the country based on demographic factors and complaint levels. The percentage of resources available to the New York region—which includes New York, New Jersey, and the Carribean under the old formula, under prior allocation had about 10.2 percent of the resources allocated to it and will have about 9.8 percent by the end of fiscal year 1982.

Mr. MILLER. This is my last question: I want to tie down this newly developed enforcement policy. I just find it rather amazing you would send off the Secretary at whatever his salary is to engage in raids in New York, Chicago, Los Angeles or where else, and yet you are cutting back the enforcement standards.

I wonder what is going to be left behind after the press release is issued. Do the people go back to work in those sweatshops? Does illegal homework continue? Do the wage and hour violations continue? Or is the Secretary going to handle all of those things singlehandedly?

I think those cutbacks are inconsistent.

Second, let us talk about this person who is going to call up the Wage and Hour Division.

According to your Department, it is estimated that 80 percent of the workers in the garment industry in Los Angeles are illegal. If that work is farmed out, the legal status of those individuals does not change.

Now, tell me how the employer just lost his club against this individual when this person calls up and says, "I want the minimum wage" and the employer says, "I will tell you what. When I hang up the phone, the next call is to the INS," because that is a fact of life, as you say, how it really works out there.

So, now you are going to translate this into a homework cottage industry in L.A. that all of a sudden is made up of white Anglo Saxons?

Mr. **Berrington**. Mr. Chairman, what you have indicated, again, is an illegal homework——

Mr. **Miller**. No, let us talk about the illegal work, sweatshops. How many calls do you get from thousands of people who work in sweatshops who call in raids on themselves?

Mr. **Berrington**. That is why we are targeting those areas ourselves and not waiting for the calls.

Mr. **Miller**. These are the people who are legally employed? Why didn't they call about the wage and hour violations? You have to send the Secretary to uncover it? This is the first Secretary of Labor who has made housecalls.

Mr. **Berrington**. I think the workers who are affected, Mr. Chairman, have a very different view of the interest of a Secretary of Labor in their protection than evidently you do. But be that as it may, we believe that the enforcement activity that is targeted to these sweatshop areas, to these garment manufacturers, when they are required to report homeworkers on their records, as they are required to do so now, where homework is legal, will assist us.

I do not believe—and I would not try to tell this committee—that there is any single action to be taken by any single agency of Government which will eliminate the abuse of undocumented workers.

California, as well as New York, has the strongest homework laws on the books now. Why aren't they handling it under their own laws? I don't think it is fair to put that burden on the U.S. Department of Labor.

Mr. **Miller**. We will come back to the fairness of your proposal, but there are rumblings in my committee that I have taken too much time.

Mr. **Berrington**. Not among us, Mr. Chairman.

Mr. **Miller**. Let me suggest to this committee we are talking about within the next few days reversing 40 years of labor history and labor enforcement in this country. I think we deserve to understand the assumptions on which that policy was made because, as this committee will later hear, for those members who were not able to stay for the entire hearing, both labor and management, employee and employer, are opposed to this provision.

There was little or no testimony in the formal hearings that were supposedly the basis for this decision, so I think we ought to examine this very carefully, because as of today there is no public hearing scheduled on this sweeping change in the law.

Mrs. Fenwick?

Mrs. **Fenwick**. Thank you, Mr. Chairman.

I must confess I am surprised to hear there are workers in this country who are not protected by the minimum wage law. It seems to me that is the first thing we should decide—whether or not it is important that all people who work should be protected by this law.

So, to that extent, I suppose I would consider that we might look at the regulations. However, I would like to ask how you are going to be sure that someone is getting the minimum wage for the work performed when they are working at home.

In New Jersey, as I remember it, there was some provision. Now, I may be mistaken here because it was a long time ago—that the piecework had to be timed, and unless that work is timed and the number of pieces turned in are recorded, you have no way of knowing whether or not indeed the minimum wage has been paid.

Now, I have heard no suggestion in your statement of how you are going to enforce—as the chairman requested you—as to how or whether you have considered that. Are you timing every single industry that you know about, so that, for example, a man's shirt or a woman's shirt is timed as to the requirement for completion so that when they turn in six shirts they are going to get the minimum wage for that many hours? Have you looked into that?

Mr. **Berrington**. Yes, we have. Normally this is how we would proceed with time and motion studies for this kind of work during our investigation. That is not only for people working at home but also working in the garment manufacturing shops themselves.

We intend to do much more of it than we have done in the past. We are proceeding to look into the special training programs for our own people, to make sure that this can be done in an expert way.

Mrs. **Fenwick**. I understand that the elderly and disabled are allowed to do homework when they get permission. Are they timed? How does that work out with them?

Mr. **Berrington**. There are special provisions so that an individual who is elderly or disabled can legally perform homework. Another provision allows some individuals to be paid based on their productivity.

Mrs. **Fenwick**. Is that done through the Rehabilitation Commission or a body of that kind, which can certify that the person is elderly, is disabled, cannot get transportation to get to the factory?

Mr. **Berrington**. We have that authority ourselves.

Mrs. **Fenwick**. Because in New Jersey that is what we did with sheltered workshops and the retarded.

Mr. **Berrington**. Yes. We do that for sheltered workshops, too.

Mrs. **Fenwick**. Good.

I would like to hear about something that troubles me very much. We know, of course, of the problems of the illegal worker. It is not just in the garment industry or home industry; it is in fields, factories, everywhere. There have been suggestions that there should be more or less fraudproof, counterfeitproof social security cards, and that the employer should be vigorously prosecuted if he hires anybody illegally. You and I and everybody in this country should have one if we expect to be paid. Father Hesburgh has suggested it and I think that is the only way out of the illegal alien problem, because before you can work you have to have the card.

I would like to know, of the 4,000 or more violations referred to by the Chairman, is that in legal or illegal homework in Los Angeles? Do you know about these 4,000?

Mr. **Miller**. That is 4,000 places of employment. We assume they are legal; they are not at home.

Mr. **Berrington**. If he is talking about places of employment where garments are manufactured, for the most part they would be covered under the Fair Labor Standards Act.

Mrs. **Fenwick**. As I understand the chairman, he was referring to 4,000 places of homework.

Mr. **Miller**. I was trying to represent to the witness the problems in attempting to enforce the law where you already have 4,000 places of employment; you are making the reduction in the enforcement staff; you have set in motion through the revocation a proliferation of places of employment you will have to enforce to make sure that the people are paid in compliance with the Federal law.

Mrs. **Fenwick**. We have received reports of inspectors going into shops and enforcing the labor law. I understood they were not required to check whether or not the people were illegal aliens; they were mainly interested in whether or not that human being was being paid the minimum amount of money.

At least in one case, an illegal alien was found. They are really the victims and we must do something about them. It is intolerable what is happening to them. We must regularize the situation somehow.

Mr. **Berrington**. Mrs. Fenwick, the President has an interagency committee working on the problems of immigration. The Wage and Hour Division in the Labor Department does not have the authority, except in regard to farmworkers in certain cases, to request and determine whether a worker is here legally or illegally.

Our responsibility under the law is to make sure that every worker receives the federally mandated wages.

Mrs. **Fenwick**. The problem we have in this country is that we have a large number of people who now are working and cannot claim protection of the minimum wage laws. That is fantastic.

Mr. **Berrington**. In a practical sense, they can't claim the protection because what they are doing is illegal under the law; so once they claim the protection, once they say, "I was abused; I was not paid the minimum wage," the result is that they won't be able to work at home at all.

Mrs. **Fenwick**. I see what you mean.

Thank you, Mr. Chairman.

Mr. **Miller**. Mr. Williams?

Mr. **Williams**. Thank you, Mr. Chairman.

I find it unusual, to say the least, and annoying, for sure, that the Secretary of Labor, who by regulation proposes this dramatic act, would not only not be at this hearing but also refuses to attend any hearing when we question his action.

Mr. **Berrington**. Secretary Donovan has been before the Congress, before committees, I think it is 14 times, since becoming Secretary. I think that is as much as, or more than, any other Cabinet member in the Government.

Mr. **Williams**. I am not questioning the Secretary's attempt, or this administration's attempt, to profile themselves before the American people, using Congress as their podium. We witnessed the President of the United States, who asked to come and address a joint session of Congress, come to that joint session and rudely use it, to use the House of Representatives, as a whipping boy when he talked about our budget.

So, I fully understand that the Secretary of Labor and others in the administration have come before the Congress.

What I am specifically referring to is that with this regulation, the Secretary of Labor, perhaps not intentionally but nonetheless, may be returning tens of thousands of workers in this country back to the days of the cottage industries. Working conditions then were chaotic, ghetto-like sweatshops replete with instances of workers being cheated, underpaid, overworked; and those conditions were so difficult to regulate that they eventually led to what can be accurately described as legitimate slavery.

Now, by the mere change of a regulation the Secretary of Labor proposes an action which some of us are concerned could lead back to some of those conditions again. When we asked him to come before us and explain his actions, he refuses to do that. At the very least, I find that annoying.

You mentioned, sir, that you had stepped up enforcement. What have you done to increase enforcement?

Mr. **Berrington**. Mr. Williams, the activities we have undertaken have been to target enforcement. Secretary Donovan indicated in March that the Labor Department would start using a strike force concept as an integral part of its overall wage and hour enforcement activity. That statement and that commitment are the first time, I believe, in the history of the Department that such a broad decision has been made to integrate strike forces into the entire enforcement strategy.

We are looking at specific areas of substantial abuse and we will be using our resources in those areas primarily, making certain that we don't allow a large inventory of complaints to build up from persons in other parts of industry.

Mr. **Williams**. If this change in the regulation should become final, I would have concerns about a number of things. Let me ask you about them.

Would industry pay the homeworker for the use of the home, the person's sewing machine, the electricity and all the rest that industry now pays for, when this work is accomplished within the shop?

Mr. **Berrington**. That is not a requirement where homework is legal now, to the extent that the cost of such facilities does not result in a homeworker being paid less than the minimum wage.

Mr. **Williams**. That would not be a requirement?

Mr. **Berrington**. For example, when an individual does typing at home on the electric typewriter on an hourly or piece-rate basis, it is totally up to the bargain between that individual and the employer as to whether the employer will provide any of the cost of the electricity for running that electric typewriter, where payment of the minimum wage is not at issue.

Mr. **Williams**. Who would bear the cost of materials spoilage? Would it be the business or the employee?

Mr. **Berrington**. Our view on that would be that it would be the employer's responsibility.

Mr. **Williams**. The employer's?

Mr. **Berrington**. Yes, sir. Any deduction from the minimum wage for that kind of spoilage, I believe, would be considered to be a violation of the minimum wage itself. There are similar situations in other protected areas.

Mr. **Williams**. Do you see the possibility of a rush on the part of employees to become involved in the homework aspect rather than working in the shops?

Mr. **Berrington**. That is a very good question, sir. We have already seen the rush to homework. There has been a lot of it that has started up over the last 10 or 12 years, apparently.

I think it is probably fair to say that there will be additional amounts of homework. Whether that is good or bad depends on the individual's perspective. Our key concern is the payment of the minimum wage.

Mr. **Williams**. Given the fact that there are now millions of Americans living near or below the poverty level, I wonder if those people, because of their desperate financial circumstances and because jobs have been increasingly more difficult to find, would be bidding low with regard to not charging for that electricity, not charging for the use of the home, not charging for the sewing machine, agreeing to accept the spoilage or at least not say anything about it, not calling in the compliance officers, because they desperately need the job and they desperately need the money, however low? Would we be seeing that type of person against person, family against family, if we undo this regulation?

Mr. **Berrington**. Sir, most of the elements you have described probably exist today in the underground economy.

Mr. **Williams**. Can we expand those elements because they exist today? Should we allow them to run rampant throughout the large cities and the garmentmaking cities in this country?

Mr. **Berrington**. In our view it is better that a minimum wage be paid, rather than the work be held illegal outright. In this way some of the worst aspects might be controlled.

Mr. **Williams**. Thank you, Mr. Chairman.

Mr. **Miller**. Mrs. Roukema?

Mrs. **Roukema**. Thank you, Mr. Chairman.

I would like to make a comment and observation and perhaps if the representatives of the administration would like to comment, I would appreciate it, but it is not required.

I don't question the intense mutual concerns here of both Republicans and Democrats about the abuses of the sweatshops. I, for one, do not want to see the legitimate interests of the workers be denied. I don't want to see—in the chairman's phraseology—30 or 40 years of labor law repealed by action of a pen on a regulation.

I think as long as we think in those terms or even talk in those terms and as long as we are simply focusing on the question of enforcement, we would miss the point of the problem here and the dimensions of the problem.

It seems to me to be far greater than just the issue of the homework regulations. Without giving approval to the repeal of this particular piece of legislation, I would advise that Secretary of Labor Donovan did a worthy thing in his raid to dramatize the reality of sweatshops and their growth in this country, despite all the labor laws and despite heavy enforcement of those laws.

I think, second, the reason for focusing on this particular regulation seems to have a rational point. Certainly I agree that the question of the Vermont knitters points up the absurdities in the way present regulations and present laws actually impact. I think that is an absurd situation.

Might I remind you, if I remember correctly, the hearing was conducted under the previous Democratic administration.

Now, I am here to learn how we can effectively deal with the problem without repealing 30 years of useful, protective legislation for American workers. But I would suggest to you that as long as we simply keep talking about enforcement action rather than examining very carefully and intelligently the underlying economic and demographic questions that led to this situation, then we are simply trying to enforce prohibition and we will fail in the same way that prohibition could not be enforced; we are not going to be successful in dealing with this problem.

So, although enforcement is an important element, it is too narrow in defining the question.

I would like to hear whatever further comments you would like to make on the economic and demographic questions that we are dealing with here.

Mr. Berrington. I think that the key question, the key problem, if I understand the demographic issues——

Mrs. Roukema. Which is the proliferation of these sweatshops despite labor law and despite heavy enforcement.

Mr. Berrington. Nobody has all the answers and all of the reasons as to why it is happening. There are probably several factors. One is the fact that since the end of the Vietnam war we have had large numbers of immigrants, legal and illegal, from Asia, and we have had a large number of immigrants, both legal and illegal, from Mexico, which has been a ready pool of labor to be exploited in these cities.

Beyond that, there are all kinds of competition questions which impact on the ratcheting down of wages.

Mrs. Roukema. You mean domestic and international?

Mr. Berrington. Yes.

Mr. Miller. On the issue of heavy enforcement, we had a similar task force in 1980 by the Department of Labor, and 64 firms in Los Angeles were investigated. One hundred percent of those firms were found in violation of the law. Those 64 firms were 64 firms out of 4,000 places of employment. That, at least in this person's mind, is not heavy enforcement.

We are now seeing that Los Angeles is scheduled for a 14-percent personnel cut in the enforcement division, New York a 16-percent reduction. In San Francisco two Department of Labor compliance officers, I believe, speak Chinese; one is learning it but is expecting to be fired as a result of the cutback. The Spanish-speaking enforcement agents in Los Angeles are limited. There is one Vietnamese-speaking person in San Francisco who is slated to be terminated and few, if any, are Korean, although the percentage of Koreans is as high as 35 percent in some of these areas.

The underlying law in terms of enforcement is the Fair Labor Standards Act of the United States which guarantees your right to wages and hours commensurate with your work. That is what we are trying to enforce.

You hit the nail on the head. We are talking about enforcement. This is not, apparently, from what Secretary Donovan has said, a philosophical argument, as in Barron's magazine. They have endorsed tough enforcement. More action has to be taken. They have cut back the people who have the ability because of their language to enforce the law and now they have proliferated the number of workplaces in which they will now have to enforce the law.

I don't see how those numbers add up to stronger enforcement.

Mrs. **Roukema**. Mr. Chairman, I think you misunderstood my statement.

I would respectfully like to point out that I was speaking of stronger enforcement under previous administrations, and during that period of stronger enforcement and greater attention the problem has proliferated.

Mr. **Miller**. That is under the previous administration, ma'am.

Mrs. **Roukema**. Let me make this point: I think the figures that you just quoted tend to support my thesis that it is not simply an enforcement problem. There is no way that we can have enough enforcement or strike forces or stormtroopers, whichever way you want to characterize them, to police all the sweatshops or the homework locations in this country. It is a far more complex problem.

I am not denying that you have made an appropriate point: Enforcement is one element of this, but it is too narrowly focused, if that is all we are talking about here today. We have to get on with some of the other substantive issues.

Mr. **Miller**. Which are?

Mr. **Erlenborn**. She is not a witness. Mr. Chairman, we are not going to start interrogating members of this committee, are we?

Mrs. **Roukema**. Mr. Chairman, I would simply repeat what I said initially: I think that Secretary of Labor Donovan has done a service by focusing national attention on this problem. Whether the removal of this regulation is a step to approach this problem in an intelligent way or not is open for discussion; but to suggest that all we need here is greater enforcement is missing the point, I think.

Mr. **Miller**. I would invite the lady to reread my remarks. The point is, if you are going to continue the same level of enforcement, I don't understand how you can have better enforcement by proliferating the number of places that you have to support. But that is an argument to be continued later.

Mr. Clay?

Mr. **Clay**. Thank you, Mr. Chairman.

Usually, when such a sweeping change is recommended, it is cause of widespread and divergent opinions surrounding a major issue. All of the mail and all of the personal contact that I have had since this regulation change has been recommended, from both business and labor, has been in opposition to the change.

So my question to you is, who are some of those who are supporting this change other than the Secretary and his employees?

Mr. BERRINGTON. When the case involving the Vermont home knitters first came to public attention there was a substantial concern expressed in the press and elsewhere about the regulation itself. The regulation wasn't particularly well known or controversial because so little had been done under it in the past. So when the regulation was enforced in this particular case it became much more widely known.

I think if you go back and look at the press accounts at that time you will find substantial criticism of the regulation. In the hearings that we had, we did have testimony from individuals; they were unhappy about the way the regulation impacted on them.

You are quite correct in saying that most of the manufacturing associations and organized labor oppose any change. Of course, we have responsibility in the Department of Labor for making the judgment to put a proposal forward. We are seeking to get comment now from all interested parties on that point.

Every individual and organization which testified at the hearing was notified personally or in writing by us that the regulation proposal was being published and we hoped to get a great deal of comment.

We are seeking solutions, Congressman, to help protect workers. We are quite convinced that the current regulation, for no reason related to its purpose—its purpose is fine—we are quite convinced that the current regulatory structure does not protect workers and we are seeking a new regulatory scheme that will allow us to do a better job in protecting those workers.

Mr. CLAY. I appreciate your comment, but can you answer the question, Who is in favor of the change in the regulation?

Mr. BERRINGTON. The comment period has hardly begun; it is not nearly over. When the comment period is over, the record will be open to everybody and those in favor and those opposed will be on the record.

Mr. CLAY. It is half over now. Who is in favor at this particular point of changing the regulation? Who is behind this?

Mr. BERRINGTON. You asked two different questions. I don't have in front of me the names of individuals who have commented as of now.

I suspect that most of the manufacturers who now use factories, as well as organized labor, of course, in their long-term interests, will be opposed. They were opposed in the hearings and they will be opposed during the comment period.

Mr. CLAY. Why would business be opposed to this change?

Mr. BERRINGTON. I think you will get a more expert answer on that from persons in the business community than from me.

Mr. CLAY. I am not getting any answers from you.

Mr. BERRINGTON. There are probably several reasons. One reason, I assume, relates to their concern for the workers. Another might relate to their concern about competition from employers who would not have a factory but who would obtain goods made at home. The third might be union relations.

Mr. **Clay**. And perhaps a fourth would be that they have tremendous amounts of capital investment in these plants; is that correct, and if a greater percentage of their business is diverted to these homes, it will have a serious impact on our ability to compete with foreign countries in this country?

Mr. **Berrington**. I think the competitive argument probably cuts the other way.

Mr. **Clay**. Tell me how it cuts the other way. I would think the technology would be what we ought to be about in terms of competing with foreign countries.

Mr. **Berrington**. I would agree with you. You don't see great technology in these sweatshops; you see the same sewing machines in the sweatshops that you see at home.

Mr. **Clay**. You are calling them sweatshops?

Mr. **Berrington**. I generally try to refrain from that term, but I think it is a term which has been used widely.

Mr. **Clay**. I haven't used it once today.

Mr. **Berrington**. It is a term used widely to refer to small garment-manufacturing shops where conditions are not particularly good and workers are making substantially less than a minimum wage, sometimes $1 an hour. The term that is often used is "sweatshop."

Mr. **Clay**. When the Secretary raided this place in New York and he found a 10-year-old girl who had recently come from Hong Kong, and a 90-year-old woman who was so happy to have a job at $1 an hour, tell me how the change in this regulation is going to prevent that in the home, the 10-year-old girl working and the 90-year-old woman working?

Mr. **Berrington**. Indeed, it might be better for the 90-year-old woman to do legitimate work at home than having to climb the five stories up to that place.

Mr. **Clay**. Working 14 hours a day?

Mr. **Berrington**. If the work and the wages are legal. She obviously was not getting the minimum wage where she was working.

Mr. **Clay**. Let me ask you one final question: If I used a portion of my home as an office, I could deduct the expenses incurred from my income taxes. Are you recommending that these people who use their home, their electricity, their heat, who buy equipment, also be allowed to deduct that from their taxes?

Mr. **Berrington**. I am not an expert on the tax code.

Mrs. **Fenwick**. I was under the impression the regulations of the IRS stopped the deduction of any expenses claimed for the use of the home.

Mr. **Clay**. But they have not stopped it. At least they have not notified me and I have been audited every year I have been here, for 13 years. I still put it down and they still accept it. Are you going to advocate that?

Mr. **Berrington**. The question of the tax laws is outside of our purview.

Mr. **Clay**. I would think that anything dealing with equity and fairness would be within your purview.

Thank you, Mr. Chairman.

Mr. MILLER. Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

First, Bob, may I welcome you in your initial appearance before our subcommittee. I presume you are going to be before us on many occasions in the future.

Mr. COLLYER. It won't be this easy in the future.

Mr. ERLENBORN. Well, you are probably right. We are taking it easy on you this first time.

Let me first dispel any of the suggestion that there is some partisanship involved or some partisan motive involved in the repeal of this regulation by asking either of you to again state when was the action taken which led to the proposal that was made, in this administration or the last?

Mr. BERRINGTON. The decision to hold the hearings, indeed the first set of hearings up in Vermont, were both during the Carter administration.

Mr. ERLENBORN. The center of the questioning today seems to put the burden of proof on the Department of Labor to show why a particular regulation should be discontinued.

It has become very popular in the Congress in recent years to promote something called sunset laws that put the burden the other way around. Rather than assuming that all the laws on the books are good and proper and therefore automatically should continue until proven otherwise, sunset laws say that statutes shall terminate unless we prove that they are still serving a good and legitimate purpose and are the best way to serve that purpose.

It would seem to me that we ought to look at this particular regulation in the same light. It was promoted and promulgated and put into force some 40 years ago, to accomplish a particular purpose. I think those who would like to have it continue under the concept of sunset ought to prove that it has actually accomplished that purpose and it is necessary in the future to accomplish that purpose.

To examine that question just a little bit, let me also—to put this in context—ask you, is all homework prohibited?

Mr. BERRINGTON. No, indeed. Most homework is permitted.

Mr. ERLENBORN. Most of the questions I have heard so far seem to assume that you are going to allow homework, and homework was not allowed prior to this proposal?

Mr. BERRINGTON. No, sir, that would be a wrong impression, and I would not want to leave the committee room today with that impression intact.

Mr. Collyer mentioned in his testimony that most homework is indeed permitted, and some examples which he gave, and which we can elaborate on, show that.

I indicated to Mrs. Fenwick a person sewing a woman's dress at home is doing it illegally, if she is doing it as an employee; and another woman doing the same work but sewing a man's shirt is doing it legally. Making buttons is illegal but making draperies is legal. We can go on and on. The distinctions are difficult to make based on any intrinsic protection of workers because we are talking about the same kinds of people who are doing these various kinds of jobs, some of which are proclaimed legal and some of which are proclaimed illegal. The overwhelming majority, of homework is of course, legal.

Mr. **ERLENBORN**. Some of the questions that have been posed and comments made by the members seem to assume that we have a pretty clean violation-free situation today, and your proposal is going to precipitate widespread breaking of the law. Is there any evidence that potential violations of the wage and hour laws of the Fair Labor Standards Act are in any way limited to or even greater in the current prohibited areas than they are in the current allowed areas of homework?

Mr. **BERRINGTON**. The examinations that we have done, and the data that we have, would indicate that the rate of minimum wage violation for work which is done at home in industries where it is illegal is about the same as the rate of minimum wage violation for work that is done at home that is legal. They are both somewhere around the 60 percent level of violation, based on the fairly limited data that we have.

Mr. **ERLENBORN**. So, to sum this up in a nonpartisan fashion, you are suggesting that we treat all homework in the same way.

Do you have any evidence on which to reach a conclusion or on which you think other people may reasonably reach a conclusion, that this particular area of homework needs special treatment different from the other areas of homework that are not so different?

Mr. **BERRINGTON**. It is hard, sir, to draw a distinction on the worker protection issue between some of the work which I mentioned which is legal and some of the work which I mentioned is illegal. Worker protection is important in both places, and protection of these workers from minimum wage abuse is important in both places.

Mr. **ERLENBORN**. Your conclusion is that if the worker does not have the threat of having an illegal job removed from him, that he is more likely to seek enforcement of the minimum wage?

Mr. **BERRINGTON**. We think that is one element of it.

We believe also that if the recordkeeping requirements under the FLSA which require that employers identify homeworkers, the work they are performing, the piece rates they are paid, as well as the hours they work and their earnings, are complied with then we will have a better handle on it.

We are not promising that a change in the regulatory structure will end abuses of workers at home, but we are quite convinced that the current structure has not done much at all to help them. Something needs to be done to prevent the real abuse, which is the underpayment of wages.

Mr. **ERLENBORN**. You mentioned violations and we have already gone over the fact that there have been, there are, violations, both in the currently legal and illegal areas.

For my final question, let me ask, Do you have any record that those members who spoke out in such high moral dudgeon this morning were complaining to the Department before these hearings, say, last year or the year before, about the sweatshops and the violation of the rights of workers in this minimum wage area having to do with homework?

Mr. **Berrington**. I don't recall that we have received an awful lot of interest in the area.

Mr. **Erlenborn**. Thank you.

Mr. **Berrington**. But I have no way of knowing their personal views.

Mr. **Miller**. We thought the budget cuts under the Carter proposal would revitalize the economy and we would have better enforcement of the law, so we didn't speak out.

Mr. Burton?

Mr. **Burton**. Thank you, Mr. Chairman.

Did I understand you correctly that the 60-percent rate of violations is found in roughly the same proportions in both legal and illegal homework settings?

Mr. **Berrington**. Based on the data we have, Mr. Burton, and I would be the first one to tell you that it is limited data.

Mr. **Burton**. How do you define the rate of violations?

Mr. **Berrington**. The violation is either a violation of minimum wage payment or a violation of recordkeeping, where there is a recordkeeping requirement.

I stand corrected, sir. These are entirely monetary violations. Violations of the minimum wage and overtime requirements.

Mr. **Burton**. What is the rate of violation in the more traditional factory setting?

Mr. **Berrington**. About 60 percent.

Mr. **Burton**. And we are seeking fewer enforcement people, with a 60 percent rate of violations?

Mr. **Berrington**. We will have fewer enforcement officers, fewer compliance officers, as part of the general reduction in the increase in Federal budget. The Federal budget will not be increased as much as it has in the past.

Mr. **Burton**. How many compliance officers do you have now?

Mr. **Berrington**. The onboard strength at the end of February was 1,647. We will be reducing that. That is total wage and hour strength.

Mr. **Burton**. Wage and hour compliance officers?

Mr. **Berrington**. Compliance officers varies around 1,000.

Mr. **Burton**. Could you submit to the committee the number of compliance officers who are bilingual, other than the English language area of competence?

Mr. **Berrington**. Yes.

[The information requested follows:]

The Wage and Hour Division has 170 compliance officers who have Spanish speaking capability and 54 others who are competent in a variety of other languages.

Mr. **Burton**. I note with interest this ludicrous press release. I think the person who put it together really has talents that might better address themselves to some television fiction.

Have you seen the release on the "Super Secretary Raid," the one that ends with a certain ring to it, after describing the physical setting of his arrival, "Crouched inside a van," and ending up after the tour to say, "Meanwhile, sewing machines whirred on in Chinatown as the drunk nodded on the street below, but there was one invisible difference: The bent-back women of the sweatshop had found a new and powerful friend"?

Do you know of your own knowledge whether or not the Secretary opposed the cutback on compliance officers?

Mr. BERRINGTON. The administration has a position on budget and our resources. The Secretary has stated at various times that he believes that the resource reductions in the Department can be handled. I must say that I agree.

Mr. BURTON. Do you have any data on the amount of wages that you have been able to collect for workers who have been paid contrary to, or not in compliance with, the Fair Labor Standards Act?

Mr. BERRINGTON. Yes. In 1980 there were agreements to pay, I believe, of underpayments of $110 million.

Mr. BURTON. As I understand it, if a worker——

Mr. BERRINGTON. I stand corrected. Approximately $80 million.

Mr. BURTON. Now, as I understand it, when a worker receives back wages, these workers pay income taxes on that earned income; is that correct?

Mr. BERRINGTON. Yes.

Mr. BURTON. You have about 1,000 workers, don't you, 1,000 compliance officers?

Mr. BERRINGTON. Approximately.

Mr. BURTON. If your data are correct, compliance officers have produced $80 million of wages due and owing on which the workers had to pay an income tax?

Mr. BERRINGTON. That is correct.

Mr. BURTON. And the employer must pay FICA?

Mr. BERRINGTON. That is correct.

Mr. BURTON. And the employer must pay into the State unemployment insurance fund; is that correct?

Mr. BERRINGTON. I believe so.

Mr. BURTON. I am sure of that.

Mr. BERRINGTON. I believe that is correct.

Mr. BURTON. Now, between the employer's obligation for unemployment insurance and social security alone that is roughly 10 percent of payroll; is that about correct?

Mr. BERRINGTON. OK.

Mr. BURTON. So, apart from these wages of $80 million, there is another $8 million or thereabouts that the Government, through one or the other of the trust funds, receives additional payments from the employers; is that correct?

Mr. BERRINGTON. OK.

Mr. BURTON. Isn't it penny wise and pound foolish in this area, just as it would be in the area of IRS enforcement, to reduce your personnel in an area that produces, in effect, revenues to the Treasury that just about, I suspect, come close to paying their salary, apart from the morality of workers being paid in conformity with the law?

Mr. BERRINGTON. Mr. Burton, resource levels can be placed at various points. There is a commitment to reducing expenditures in the Federal sector.

Mr. BURTON. Here is what troubles me, really——

Mr. BERRINGTON. I suspect that we will have the same kind of positive outcome to the Federal Treasury with any level of employees that we have.

Mr. **Burton**. Here is really what troubles me, at least. I fully believe this is another instance where this administration is turning its back on the American worker. This is consistent with the pulling back of the cotton dust regulations, reducing the enforcement strength under OSHA, trying to eliminate a section of the Department of Energy that similarly is enforcing the law against the oil and gas companies that are overcharging the American public; and what disturbs me so much is that this is a conscious effort to abdicate the responsibility the Government has to protect both the powerless and the abused as well as the public interest.

I am just astonished at the bravado and the sweep of this administration's proposals that really are turning their back, as my distinguished chairman has indicated, on 40 years of the effort to bring a measure of economic justice to the workers of this country.

It is a shell game and I commend the Chair for calling these hearings. At some point, hopefully, the American public is going to see what is being visited upon them. It is incredible, with the fundamental dilemma we have generally in a highly competitive industry, where each penny has some meaning in terms of profit or loss; it is always a fact that workers are going to get the short end of the stick.

You add to that the large immigrant communities, a number of whom are not here legally. In a trade like this, that compounds the dilemma. I would think that everyone would stipulate that this cannot be done with fewer enforcement officers. It just can't be. You know that and I know that.

You must defend the position of the administration. That is your lot, once you come up here and a policy decision is made, and I can't quarrel with that role; but you certainly cannot quarrel with our role to bring to public view the inevitable characterization that this will be another step in the administration's turning its back, in my view, on the interests of the American working men and women.

I will further submit—and I know this first hand and this administration need not take the full brunt of this observation—if you don't have bilingual people, bilingual in the language of the workers, you are not going to get adequate enforcement.

In this press release I made reference to, I noted with interest they did not talk about the Secretary coming with a Chinese-speaking compliance officer; they talked about the Secretary coming with a Chinese interpreter. Now, perhaps I read the statement too literally, but it is self-evident in New York and in San Francisco that we have an enormous number of people in employment whose primary language is the Chinese language, formerly Cantonese and now Cantonese and Mandarin.

So, your lack of adequate bilingual personnel is something that I would urge you to deal with, and to the extent the previous administrations have not corrected this, I say, shame on them; but to the extent that you don't correct it in a short period of time, I will be saying shame on you.

Thank you, Mr. Chairman.

Mr. **Miller**. Mr. Ryan, let me ask you something:

In terms of the enforcement, as I understand generally the Department of Labor responds in terms of the employment sites that offer employment within the garment industry and in many instances, outside of the raid technique, responds to complaints, I assume, by employees who say that they are being forced to work in violation of the Federal law.

If you think it is legitimate, you go out and you make some kind of inspection; would that be correct?

STATEMENT OF T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR

Mr. RYAN. That is correct.

Mr. MILLER. In the case of a person who is working in his own home—and I assume in some cases those complaints are anonymous—would that be fair to say?

Mr. BERRINGTON. We get complaints that are anonymous.

Mr. MILLER. And you may respond or not respond to them, depending on the degree of validity you give to the complaint?

Mr. BERRINGTON. Every complaint is reviewed and a decision is made to pursue or not.

Mr. MILLER. What do you do with a neighbor who says the woman next door is working in violation of a Federal law in terms of legal procedures in entering a victim's home, how would you expect to enforce that complaint?

Mr. RYAN. I think that would be best addressed by Mr. Berrington. The enforcement people work with him.

Mr. MILLER. I wondered if the Solicitor's Office has considered the ramifications of enforcement under this provision?

Mr. BERRINGTON. I will be glad to respond to that. Because most work in the home is legal and not illegal, we deal with that question now by knocking on a person's door and dealing with the matter. We can be turned down, at which point we are either successful or not successful in getting an administrative subpena to compel their employer to provide us with information concerning the wages and hours worked by the employers.

Most complaints about violations of the law, although not all, most of the complaints concern violations perpetrated against the individual who is making the complaint.

Mr. MILLER. So, in those instance you are suggesting that the complainant is the employee?

Mr. BERRINGTON. In most cases; not in all cases but in most.

Mr. MILLER. On the violation rate, you said that you had about a 60-percent violation rate in a legitimate shop. These figures I have given you in terms of the Los Angeles task force, in 1980 reported that they had an overall violation rate of 95 percent. I think in one case they even said every shop had some violations.

How did you make the determination of 60 percent?

Mr. BERRINGTON. It is a rate based on overall enforcement, which, of course, is much broader than enforcement in the garment industry.

Mr. MILLER. So, your 60-percent figure is beyond the garment industry?

Mr. BERRINGTON. Yes, sir.

Mr. MILLER. I think the committee ought to take note of that, because that is why the garment industry early on was singled out for illegal homework.

Mr. **Berrington**. The point we are trying to make, Mr. Miller, is that in relation to homework, industrial homework, the percentage of minimum wage violations that we find is approximately 68 percent where the homework is illegal, where it is legal to do the work, we find minimum wage violations 61 percent of the time.

Mr. **Miller**. Describe the data on which that is based.

Mr. **Berrington**. As I indicated, these data show the regulation has not been particularly useful. We are talking about a total over the 5 years of 76 investigations, 22 in the restrictive areas, in other words, where it is illegal to work, and 54 in the nonrestrictive areas.

Mr. **Miller**. Over 5 years you have made 76 investigations?

Mr. **Berrington**. That is right. It is a record which shows that the regulation is not enforceable.

Mr. **Miller**. Let us go back. You had 2 years of hearings in this decade of violations, or longer than a decade of violations, that culminated in putting this law on the books. You had two days of hearings at which—with limited exceptions of the knitters in the sportswear industry in Vermont, and you mentioned Colorado; no one testifies with those minor exceptions—I think one legal foundation that had a client—that this law should be repealed.

Some people were unhappy as to how it was applied to them. So, you have those two days of hearings, and then, as you say in the proposal, "After careful consideration"— there is a song with that title—"of oral testimony and written comments received and information the Department has obtained independently"—I assume this study is an independent study by the Department of Labor that you had on the books or on the shelf?

Mr. **Berrington**. Yes, sir.

Mr. **Miller**. So you take that on one side of the scale and you take a study that over 5 years ago has 76 investigations, and I have 4,000 locations alone——

Mr. **Berrington**. A totally different situation.

Mr. **Miller**. But from an investigation of those 4,000 people, I get 100 percent violation nationwide of these employees; I get over $100 million in back wages, and you tell me from 76 investigations nationwide you can extrapolate that the regulation is not working?

Mr. **Berrington**. That was not the primary reason we said the regulation was not working.

Mr. **Miller**. Let us go to the independent information you obtained, because apparently that is what is cloudy, because the record is other than that, the Vermont and Washington hearings being those minor exceptions I have noted.

Let us go to the independent evidence that you obtained; what was that?

Mr. **Berrington**. Mr. Chairman, I think I said "information." As I indicated earlier, in looking at the regulations we looked at the hearings. We also looked at the question of what would be the enforcement impact and administrative impact, long term, of any particular type of change.

We looked at the ways in which we thought that workers would most likely be protected, because it was clear that under the current regulatory structure they are not being protected. We looked at the data that we have.

I think that I said now, this morning, several times, those data are not very strong and very useful in long-term analysis.

Mr. **Miller**. You made a determination that the worker is not being protected. Based upon what?

Mr. **Berrington**. Based on knowledge and testimony from State labor commissioners and others from around the country that illegal homework is proliferating.

Mr. **Miller**. And from your study that the regulation was ineffective?

Mr. **Berrington**. We know pretty well that the regulation is not being enforced and has never been enforced.

Mr. **Miller**. Based on a regulation that has not been enforced, we are now advocating the change? We talk about strong enforcement, heavy enforcement, in previous administrations. You are not telling me that it has never been enforced; you are telling me that you are reducing enforcement. I don't mean to badger you. I think it is important that we determine the evidence, because the evidence on the other side—at least in my belief—is rather substantial.

You told me that employers in the industry who know their industry came to you and—in response to Mr. Clay—suggested that the first concern was probably for workers and a concern about competition, and in the publication you make a finding there is no adverse impact on competition. I think you have to justify that.

Mr. **Berrington**. The finding had to do with the additional cost that would be imposed by the regulation, by the proposal, I believe. The effects on competition relate to information that we have sought from the public. We list several areas that we are seeking information on from the public, and we are seeking information in that area.

I might add that there was testimony in the hearings from the Small Business Administration that there would be no adverse impact on competition.

Mr. **Miller**. Isn't this a finding that you have already made? I appreciate you keep asking for public input, but what happens in 30 days?

Mr. **Berrington**. We will review the comments that we have received.

Mr. **Miller**. How could you make these findings without the comments?

Mr. **Berrington**. Every proposed regulation has within it a way in which the agency intends to proceed unless it receives comments which are contrary or specifically sets out questions that it would like the public to address. It is hard for me to see a proposal from a Federal agency which does not set out a particular portion at the time the proposal was published.

Mr. **Miller**. In order for this to not be classified as a major rule, certain findings have to be made, and apparently those findings of fact have been made?

Mr. **Berrington**. About the cost of the regulation.

Mr. **Miller**. And about its impact on competition.

The $100 million is an assumption?

Mr. **Berrington**. It relates to additional cost factors, Mr. Chairman.

Mr. **Miller**. Mrs. Fenwick?

Mrs. **Fenwick**. Thank you, Mr. Chairman.

I, like my colleague here, think we are wrestling with something that appears on the face of it to be contrary, really, to commonsense. We have had a regulation, apparently, or law, for 40 years and it is simply not working. They cover seven of the many occupations which are involved in homework. We have legal and illegal homework and we apparently know it. The result is that we have in the illegal homework workers who are not covered by the minimum wage law.

Now, the purpose of these hearings surely ought to be to make sure that everybody who works is covered by the law. I think that that is clearly what we are all trying to bring about here, including the Department of Labor, Mr. Chairman, in one joint hope and intention.

Now, what we have been doing is not working.

Mr. **Berrington**. I think that is quite clear.

Mrs. **Fenwick**. We have these seven covered occupations, leaving out all the others that we don't even pretend to apply the law to, or protect the workers in, which are far more onerous than the ones in which they are protected.

Something is wrong. It is against commonsense. One begins to wonder why don't we simply say that all workers are going to be protected by the law, the minimum wage law, and that we insist on compliance. It would be commonsense that that is the most appropriate decision.

Mr. **Miller**. That is the law of the land; it is a Federal law.

Mrs. **Fenwick**. The fact is that in the illegal shops they are not protected because they can't appeal to the protection of the law because they are doing illegal work. As I understood the testimony in answer to my question earlier, that was given by the representative of the Department of Labor, that they can't get the minimum wage when they complain because they are doing illegal work.

Mr. **Berrington**. Yes, ma'am, they are covered by the FLSA, but to report a violation of payment of minimum wage to them when engaged in illegal work results in their not being able to work at home in the future.

Mrs. **Fenwick**. Suppose I am an illegal worker at home and I am making women's shirts, not men's, and I complain. I know that these shirts, with sleeves the length the women want, should pay so much, and I am not being paid. Can I collect back wages?

Mr. **Berrington**. Yes, you can collect back wages. We are under an obligation then to work out an agreement with the employer not to have you do any more work at your home in the future at legal wages or otherwise.

Mrs. **Fenwick**. So you have to stop the employment, but I could collect back pay?

Mr. **Berrington**. Yes, ma'am.

Mrs. **Fenwick**. Which I have not received?

Mr. **Berrington**. Yes, ma'am.

Mrs. **Fenwick**. So that there is some hope at least there. I was under an earlier impression from your testimony that they would not get anything except termination?

Mr. BERRINGTON. No, we would not want to leave that impression. We didn't mean to.

Mrs. FENWICK. I see. Thank you.

Suppose we simply said all homework is going to be protected, all homework is under the law; what would happen?

Mr. BERRINGTON. I know what would happen as far as the Department of Labor is concerned: We would move rather quickly to start dedicating resources, which we have not done in the past, to investigate areas where homework is being done. We would do that through special targeted investigations of the small garment manufacturing shops where we believe there are people who do both work at the factory and at home who are not properly paid.

Mrs. FENWICK. What provision in the law is there for an employer who is not giving the minimum wage; are there civil penalties, criminal penalties; what is the law on that?

Mr. BERRINGTON. The primary methods are the use of the injunction procedure, if you have to go to court, enforcing payment of back wages that are due. There are criminal procedures for egregious violations of the law.

Mrs. FENWICK. How much of the $80 million that you collected resulted in a fine for the employer or any kind of civil or criminal penalty?

Mr. BERRINGTON. These are just back wages.

Mrs. FENWICK. How many of these back-wage discoveries resulted in some kind of penalty for the people who are employing——

Mr. BERRINGTON. There is none right now.

Mrs. FENWICK. That is a change in the law that could well be made. I believe we could find higher compliance and if we had some penalty for those who employ people contrary to law, that would be one of the things I would like to add to the regulation.

Mr. BERRINGTON. We can't quite do it by regulation; but it has been a matter of concern to us as well.

Mrs. FENWICK. We will do it in this committee.

Mr. MILLER. With your support, Mrs. Fenwick.

I want to thank you very much for giving us your time and testimony.

I obviously reserve for myself and for other members of the committee the right to follow up with written questions on this matter.

Thank you very much.

Mr. BERRINGTON. Thank you, Mr. Chairman.

Mr. MILLER. The committee will now recognize for the purpose of testimony Senator Monyihan who has graced us with his appearance, the Senator from New York, and also former Assistant Secretary of Labor. Senator Moynihan, welcome to the committee.

STATMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman and members of this distinguished committee, I am, as you were kind enough to state, Mr. Chairman, the senior Senator from the State of New York and I have to say to you I don't know what I am doing here. I have served as Assistant Secretary of Labor under President Kennedy, under President Johnson. I come from a State which has long pioneered in labor laws to protect women against exploitation in the grim circumstances of the slums of our great cities and we thought we had done that in the 1930's. We thought Franklin D. Roosevelt had settled that.

In 1935 our State outlawed factory work in homes, which is what we are talking about. We are not talking about knitting. In 1938 the Fair Labor Standards Act adopted by this Congress made this national policy and in the next several years the rules now proposed to be abolished were promulgated.

In our own State in 1975 we abolished our homework division. It seemed that at long last that disease of industrialism had disappeared like tuberculosis. We have now had to start it up again because it has started up again just as we recognize that the consequences are very similar to the 1910's, 1920's, and 1930's, immigration, people who come here, not always legal, not always having the language, having no connection, are herded into these situations. They don't know their rights, they come from places where there are no rights, and they are abused.

It is women who are abused. We thought that we had stopped this. All of a sudden the Federal Government and the new administration is proposing to not just to accept it but in a sense to ask why shouldn't it be? This is part of a set of events that shattered me.

Over on our side, Mr. Chairman, 2 weeks ago in the Senate Finance Committee, at the request of the administration we abolished a section. We tore out of the Social Security Act a section that has been there since 1935 that says if you are an orphan in the United States of America and are placed in foster care you are entitled to have a share of your cost provided by the Federal Government.

Orphans don't vote. Neither do women doing sweated labor in their kitchens in lower East Side Manhattan. But surely that is why the Congress is here, to protect people who can't protect themselves. Surely we are not going to undo the work of half a century in this sudden paroxysm of antedelavian social Darwinism.

I asked the members of the Committee of Finance, was it our idea that orphans who no longer had support would be turned out on the streets at age 3 and learn to work early and get a jump on their contemporaries and start investing their savings?

Mr. Chairman, I don't know what to say. I can't imagine we will allow this to happen. I can't imagine we will allow this to happen. It would be shameful.

I would like to make one particular point. Labor legislation in our country from the first has been particularly concerned with the condition of women workers. The Triangle Shirt Waist fire in New York was particularly terrible. Who died? Young women workers. There were no provisions for them. It is the same way with the homework provision. These are women and they are often immigrants, they often do not speak our language. They are easily exploited.

In the midst of the Depression of the 1930's we found it within our wherewithal to protect their rights. Fifty years later can we no longer afford to do so? Surely we can.

Mr. Chairman, I don't want to be carried away here. I have a statement that I will submit for the record. But I will be happy to answer your questions, sir. I was in the Department of Labor under two Presidents and have some sense of how the Wage and Hour Division worked and the problems of that Division. I used to think of the Division as the Marine Corps of the Department of Labor. They were out on the ground, in the factories, in homes, a good tight tough outfit, proud of what it was doing.

I can't imagine they are very proud of what is now being proposed.

[The prepared statement of Senator Moynihan follows:]

PREPARED STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Mr. Chairman, I thank you for giving me the opportunity to testify today; however, I must confess that I am somewhat surprised to find myself here speaking on the subject of industrial homework. It was after all in 1938 that the Fair Labor Standards Act first gave the Secretary of Labor the power to regulate the practice of homework. And it is over thirty years since the Congress ratified the regulations that the Secretary had promulgated by incorporating them by reference into the FSLA itself.

Indeed my own State of New York took action to end this kind of exploitation even before the Federal Government. In 1935 New York passed the Industrial Homework Law and the Labor Standards Division of the New York State Department of Labor established a special enforcement unit.

The years passed. And with them many of us believed passed the use of homework. By 1975 New York State had disbanded its industrial homework unit.

But recently we find that there are signs of a resurgence of this form of exploitation. In testimony before the United States Department of Labor in its review of Homeworker rules state official after state official teestified as to the widespread violations of minimum wage child labor and hour standards by employers using homework.

And a 1979 Illinois survey revealed these results of 109 investigations; 41 establishments in violation of one or more labor laws; 349 violations of the Industrial Home Work Law; 315 violations of the Illinois Minimum Wage Law; 1 violation of the Illinois Child Labor Law; 40 violations of Wage Payment and Collection Act; 59 violations of the Illinois Six Day Week Law; $32,540.20 in back wages due employees

In an April 1981 hearing conducted by the New York State Department of Labor Frank Mercurio, Regional Administrator of the Employment Standards Division of the United States Department of Labor remarked on the "alarming increase in illegal homework relating to the manufacturing industries." Which is the use of industrial homework on the rise? Because it's cheap. The employer is not trying to give the employee a chance to make money at home, he is trying to get his product made at less cost and under less regulation. He assumes little or no responsibility for his workers. He reduces his overhead and pays no heat, light, electricity or water bills. Work at home defies regulation since no government, state or local, has enough inspectors to enforce violations. Thus, this practice spawns widespread abuse of child labor minimum wage, maximum hour standards and safety and health provisions. It would be a mistake if we were to begin to look at homework as a method for people to make a little extra money at home. It was never this. It has always been a means of circumventing our labor laws. Of exploiting our people.

The Secretary of Labor has now proposed ro remove the regulations that have controlled homework and thus protected workers for nearly 40 years. He makes his proposal because he believes that "To the extent that minimum wage and overtime violations exist * * * elimination of the regulations would make it more likely that homeworkers * * * would report such violations without fear of losing employment." Mr. Chairman, this is simply untrue. By encouraging the growth of a practice that by its nature exploits workers, the Secretary will encourage the abuse of our laws. We should not return to the sweatshop no matter where that sweat shop is located.

Mr. **MILLER**. Senator, let me thank you for your statement because it comes on the tail of both testimony and questioning. In fact, your opening line that you don't know what you are doing here, is reminiscent of almost everybody who when informed of this proposal for revocation was shocked with disbelief. They could not understand where it came from. We failed to get answers in the Department. We heard that a couple of people who were knitting in rural Vermont and perhaps in Colorado testified they didn't like the homework rule against them, the way it impacted them.

No other testimony other than apparently, as you term it, a right wing legal firm that had a client. Absent that, no testimony and all of a sudden we are confronted and Mr. Kirkland was surprised, everybody was surprised that this action was taken. Because apparently the evidence, as I suggest, is to the contrary. I think it ought to be noted the New York experience where they had made a determination they thought conditions could not revert, conditions could not go back, California where they have tried to strengthen the law because conditions are other than that.

I think that is a very important piece of evidence and the enforcement officers of those states testified that this action should not be taken because, as you pointed out, we are talking about factory work in the home and under any other title it is interesting that the Vermont newspapers have editorialized against this action, sympathetic with the knitters but saying this is wrong. That was the point of interest that the previous witness testified to.

My concern is one of enforcement. The gentle lady from New Jersey has suggested the question really is to insure that everybody in this country who is entitled to the minimum wage gets the minimum wage. My concern is that the revocation of the industrial homework rule will in fact provide for a proliferation of job sites, whether they are tenants in the apartment house in the lower East Side, because that would not qualify, this is not a suburban home in California with three bedrooms, three baths, and a swimming pool. It works in the urban areas also.

You have passed on the budget cuts already. New York City is slated for a 14-percent cut, L.A. for a 16-percent cut in labor enforcement. I just wonder if somebody who has looked at these figures already in light of the budget can determine whether the Wage and Hour Division can do the job.

Senator MOYNIHAN. Mr. Chairman, that is the point. Here you have an administration that says we want to cut back Government regulation, we want to cut back the size and cost of Government. You can enforce the minimum wage in home work very simply. Have one investigator for every home worker. It will all work out fine. It is just that it is not exactly a way to reduce the size of bureaucracy.

Mr. BURTON. That sounds like my kind of program, Pat.

Senator MOYNIHAN. If you want an army of Federal employees prowling through the back rooms and attics and basements of American houses across this country, if you want the Feds with badges showing up and saying "All right, ladies, open up, come on, where is the sewing machine? We know you have it here. Is it in the basement? In the closet? Under the bed? Bud, get under the bed."

If you want them prying through everybody's laundry, in the attic, broom closet, garage, dog house, fine, you can do it. One hundred fifty thousand Federal inspectors could do this job well, 250,000 better. But is that what this administration wants?

We almost got rid of homework. We established factory laws. We had fair labor standards. We have had a resurgence I think because of two things. One is a deep economic recession and worse in our major cities. In New York City alone, if I can give you an example, Mr. Chairman, between 1969 and 1975 we lost 400,000 recorded jobs below 59th Street on the Island of Manhattan. Now there are about 13 states, sir, that don't have a work force of 400,000. Now I don't think those jobs disappeared. Some of them just went underground. You can't lose 400,000 jobs in 7 years in that narrow confinement. Some of those businesses went out of business, workers stayed, new semilegal kinds of work began.

That means a lot of homework too, particularly down in Chinatown a lot of that is taking place. There are a lot of new immigrants in that place. That is what is happening. The recession combined with the immigration to produce the same problem we had that brought about this legislation starting at the turn of the century when we first started talking about it.

Mrs. FENWICK. Senator, if all factory work so-called were covered, these regulations would make sense perhaps. But only seven are. And I would like to say a word about subsidized foster homes described by the president of the Children's Defense League as probably the most damaging legislation this Congress has ever passed, keeping children shuttling from foster home to foster home on account of the Federal subsidy.

I wrote the law that started New Jersey subsidized adoptions. When the social workers found the situation was satisfactory we subsidized adoption before the Federal Government ever moved and that is what I think we should have done federally.

It seems to me from your testimony that we ought to make all homework illegal, with heavy penalties for any employer who illegally, pays anybody for work at home.

Now I can see the commonsense of having anonymous informants, which is what we did with my child abuse law. We made it possible to have anonymous informants who never got involved in neighborhood fights and struggles because they didn't have to give their name. You would not have to have an army of enforcement officers.

Or you can go to what they do here in Washington, a thousand dollars to anybody who reports a crime. These are ways of making the public part of the enforcement system. What do you think of that? If it really is as bad as you say, what in heavens name is the point of covering seven out of all the occupations when we know that even with seven covered we are proliferating homework? Let us make all homework illegal with very heavy penalties for any employer who gives anybody a subminimum wage for working at home unless they are elderly, disabled, and so certified by the rehabilitation commission of the State.

Senator MOYNIHAN. Mrs. Fenwick, one of the great traditions of labor legislation in this country has been its empiricism. People have tried to say we have worked not from theory to practice or practice to theory but the question is we established these seven industries or activities in the 1940's when they turned up through inquiry to be the most conspicuous activities involving the most abuses.

What you have a Department of Labor for is to go out and find out how much has this changed. It may be that you are right but we have a good position in the Department of Labor having gone out and learning what actually does take place, and to what degree are they abused. It may be that there are some types of home work that need not be prohibited. I would like to have a good reason from the Department.

Mr. **MILLER**. I point out that the Secretary currently has this authority under the law. He can expand the definition and the categories covered at any time which is interesting since this Secretary found problems, found it inconsistent with the law that women's shirts would be covered and men's shirts would not. If he finds problems in the men area you know he can go out and certify and put them under the provisions of this law.

Mrs. **FENWICK**. It seems to me that what we are doing has not worked. The system that we have had has not worked to protect the workers and that is the point of this whole exercise, to make sure nobody in this country is employed at a subminimum wage, is that right?

Senator **MOYNIHAN**. I am not prepared to say I know that, Mrs. Fenwick. I think the system works pretty well as I think these two events of recession in the cities and the general economic recession plus immigration reproduced some of the earlier events. I would have thought by 1935 people were getting paid the minimum wage and in New York we judged we had this particular problem out of the way like tuberculosis.

Mrs. **ROUKEMA**. I am listening with great interest because I can't solve this problem in my own mind as to what is really the problem here.

Senator Monyihan, I waited a long time to hear your testimony this morning because I have the highest regard for your expertise and your intelligence not to mention your wit. But following up on what my colleague from New Jersey was saying, we have a law here that is not working under the present circumstances. I want to repeat to you something that I said earlier with the Department of Labor people and in response to some of the points that the distinguished chairman was making. The answer seems to be that we have here an enforcement problem. I made the statement that it seems to me that we have far more than an enforcement problem, that we could not create enough investigators or storm troopers or strike forces to police the situation.

I think you would probably agree with that statement, is that correct? You would agree with the statement?

Senator **MOYNIHAN**. I think there is a strategy. When you make homework illegal you get very much less of it, it practically disappears after a point and it starts to come back only in special circumstances. That sort of polices itself. Firms don't do it. When you make it legal but require that there be standards maintained, then you have to inspect the homes at the same rate you inspect the factories. By definition there are so many more homes. It is an inefficient way to do that job.

Mrs. **Roukema**. That is an excellent point. Let me get to the question I have in mind. The economics and the demographics have forced the resurgence or reemergence of this as a problem. I don't view the dimensions of the problem as being as vast as we have been led to believe, but I think it is a serious problem that I would like to see eradicated. How do we go about that? Obviously the regulation on the books has not prevented the emergence of this problem. You are suggesting that by deleting the regulation the Department of Labor is not performing the function that they thought they were going to be accomplishing.

Senator **Moynihan**. Right.

Mrs. **Roukema**. Now no one thus far, neither the members of the committee nor those who testified, have gotten to the heart of what are we going to do about it. The regulation is not working. You are suggesting that it not be repealed but that it be kept on the books. With or without the regulation how do we control the proliferation of the sweatshops? Simply making them all illegal does not solve the problem.

Senator **Moynihan**. Would you mind if we distinguished between the question of homework and the question of sweatshops? Sweatshops are illegal factories. They are factories that do not obey the laws. You get rid of them by regulating, by doing your work. That is a much more important priority. If I were Secretary of Labor and was assigning my resources I would assign my wage and hour people to factories. I would not want them running around in people's homes trying to do the same thing.

Therefore I would not be repealing the homework prohibitions right now. I would be paying my attention to sweatshops.

I put it to you this way. This decision by the Secretary of Labor has not been researched to the standards of the Department of Labor. When Madam Perkins was Secretary of Labor you damn well didn't make the decision affecting the lives of 15 million American women on the basis of hearsay evidence from 40 people in Vermont. You went out and got your facts straight. That is what the Bureau of Labor Statistics is for. You found out. If it took a year and a half you took a year and a half. If it was dull testimony, it was dull testimony because these are very real lives, very real lives.

Francis Perkins would bore everybody to death, the President included, with her data, but she got those women out of those sweatshops. She got them their rights. There is no domestic slavery worse than being locked up in a house with a month's supply of gloves you have to sew at 20 cents an hour and not dare tell anybody about it because you know you are being paid less than the law requires and if anybody finds out you might get in trouble too and be sent back to Venezuela.

Now the work that the Department of Labor is supposed to do was not done. If I were Secretary of Labor and this kind of material was brought to me I would wonder what in the name of God has happened to the finest bunch of servants in this town. They have not established a case for abolishing the regulation. They have not established a case for turning their resources, their scarce resources to the most thin and expensive kind of regulation which is finding one person in one house when indeed right before us, as you say, is the problem of those 70 people on the fourth floor locked up in a loft in Manhattan. That is where they should be now, not putting women back to work sewing gloves in their kitchen. That is my view.

Mrs. **ROUKEMA**. Thank you very much.

Mr. **MILLER**. Thank you very much.

Mr. Kildee.

Mr. **KILDEE**. I have no questions at this time.

Mr. **MILLER**. Mr. Ratchford.

Mr. **RATCHFORD**. I find it ironic that at the same time we are having highly publicized visits on behalf of the Secretary of Labor to the sweatshops, that quietly in the fine print we are talking about suspending regulations designed to protect the people in the sweatshops. It seems to me we get down to your statement, it may be dull, it may be dry, it may be tedious but it is a question of enforcement, is it not?

Senator **MOYNIHAN**. I could not agree more, sir. If I could just leave you with this thought. It is that there is always a question that resources are always scarce, the number of qualified inspectors in the Wage and Hour Division has to be limited. Where do you want to put them? We have just seen the reappearance of the sweatshop. Ought they not be back at their original task rather than be diffused to this wholly new and unnecessary activity? They have not made their case.

Mr. **MILLER**. Let me say that you have distilled this hearing quite correctly. The case has not been made. There has not been one shred of evidence submitted to this committee or to the Department that the law is not working. There are people who don't like the law. They want to have homework. They want to farm out the work, but not that the law is not working any more than the law against homicide is not working but we have trouble with enforcement and we try to put our resources there but we don't erase the law because somebody says "I don't like the law against homicide, it infringes on my liberties."

In this instance you have a group of people whose testimony about and against the law was not so that it could be enforced. The testimony by these groups was to get rid of the law so that you could not enforce it. That is what they were looking for. If you will read the record submitted to the Department of Labor those people testified against the law as a whole because they have the philosophic argument, as was stated in Barron's, that employment in a sweatshop is a capitalistic act between those two consenting adults, and that view of the world was held by one witness and on that basis we are saying the law is not working.

The problem is that the law is working but people find profit in repealing the law.

Mrs. **FENWICK**. I don't think the law is working because we are told illegal homework is proliferating.

Mr. **MILLER**. Did anybody ask the employer how many employees do not engage in homework because it is illegal? They are coming to testify to the committee that they do not engage in it.

Mrs. **FENWICK**. At the beginning of this statement I said what you are saying, Senator. I said we should be concerned with the sweatshops and the conditions in shops that are operating with numbers of people illegally. We had concentrated, I am sorry to say, until you arrived, entirely on homework.

Mr. **Miller**. Because that is where the Secretary of Labor is concentrating.

Mrs. **Fenwick**. I wish I did not notice—maybe I made a mistake, I hope I did—your reluctance to make all homework illegal so that we won't have the problem of exploiting people who cannot be investigated, so that we can concentrate our efforts on sweatshops.

Senator **Moynihan**. I was speaking I thought from a respect for a very old and very important tradition of labor legislation in the United States, that we don't make proposals until we know what we are talking about. I think that your idea is a perfectly respectable one. Let us ask what form of homework now takes place. Which are to be associated with persons very much exploited? Which persons are on the edge of poverty? Which have a lot of help for handicapped? Who does it? What do they get paid? What are their hours? What is their pay? What is their condition?

The reason we built a good system of labor legislation in this country is that we got our facts straight. We investigated. As I say, Francis Perkins would bore you to tears with her data.

Mrs. **Fenwick**. She was a great friend of mine and she never bored me.

Senator **Moynihan**. In the end she carried the day because she had her facts. It was not enough she felt something was right. She wanted to prove something was right. If you think this should be expanded, bring in the Secretary of Labor and say to him "Let us get a study on this subject generally but for Heaven's sake don't start abolishing what should be——

Mrs. **Fenwick**. Should not every worker who works receive the minimum wage? Isn't that the principle we are trying to bring about?

Senator **Moynihan**. Yes. That certainly is the case. It is more than just the minimum wage involved. It is a question of your relations to your employer and steadiness and the general legality. There are entitlements to health insurance and to social security payments. The biggest problem you will probably find with home workers, Mrs. Fenwick, is that those persons don't get paid their social security. It all looks like you saved $3 this week but you turn up 62 one day and you have nothing.

Mrs. **Fenwick**. I think we ought to abolish it.

Senator **Moynihan**. I leave that to another hearing. I only came over here to say leave well enough alone.

Mrs. **Roukema**. Senator, do you have another moment?

Senator **Moynihan**. Yes, ma'am.

Mrs. **Roukema**. I am not completely conversant certainly with the testimony that was given at the time of the Vermont knitters. On the face of it that kind of situation where the law works against that kind of situation to me is an absurdity. Could you comment from your experience on how we could be less restrictive on people such as those Vermont knitters and still protect the American workers? Perhaps you totally disagree that it is not an absurdity.

Senator **Moynihan**. I guess I would have to say this is a subject on which I have spent a lot of my life. There is no older tradition in labor legislation than when you are talking about the life of a 57-year-old Cantonese illegal immigrant working 15 hours a day, half dark, on the fourth floor of a slum on Mulberry Street in Manhattan. You usually find conjured before you the image of a splendid Scandinavian housewife in Minnesota whose opportunity to add a little extra money for church socials is being impaired by a brutal and unfeeling Government which is in the hands of persons of dubious loyalty and doubtful good sense. Of that, you can be sure.

Start talking about exploited Venezuelan women and the next thing you know you have Vermont housewives sitting by log fires, looking out on pastoral splendors and knitting elegantly designed hats for their neighbors and friends. That is what it is about.

Mr. **Miller**. Senator, thank you very much for taking your time to come here.

Senator **Moynihan**. Thank you for holding the hearings.

Mr. **Miller**. Next the committee will hear from the Federation of Apparel Manufacturers, Kurt Barnard, Manny Eagle, Eugene Steinberg, Yale Garber, and Sam Blutter.

We welcome you to the committee. As you can obviously observe by the time we have kept you waiting, we have run far over what we anticipated. Let me state that your entire statement will be included in the record and I want you to feel free to paraphrase. But I don't want you to miss any points that you want to make to the committee.

Also to the extent to which you want to respond to previous testimony given, feel free to do that. If you will identify yourselves.

STATEMENT OF KURT BARNARD, EXECUTIVE DIRECTOR, FEDERATION OF APPAREL MANUFACTURERS (FAM), ACCOMPANIED BY MANNY EAGLE, MEMBER, BOARD OF DIRECTORS (FAM); EUGENE STEINBERG, PRESIDENT, CTI FASHIONS, INC., MEMBER, EXECUTIVE COMMITTEE (FAM); SAMUEL BLUTTER, PRESIDENT, DOLLY MARTIN, INC., MEMBER, EXECUTIVE COMMITTEE (FAM); YALE GARBER, EXECUTIVE DIRECTOR, APPAREL MANUFACTURER'S ASSOCIATION; AND JEROME B. KAUFF, GENERAL COUNSEL (FAM)

Mr. **Barnard**. Thank you very much, Mr. Chairman. My name is Kurt Barnard. I am the executive director of the Federation of Apparel Manufacturers [FAM]. I want to thank you and your committee for this opportunity to appear before you. To my extreme left is Mr. Manny Eagle, a member of FAM's board of directors. Next to him is Mr. Eugene Steinberg, president of CTI Fashions, Inc., a manufacturer of children's outerwear and a member of the FAM executive committee. On my right is our general counsel, Jerome Kauff and next to him is Mr. Samuel Blutter, president of Dolly Martin, Inc., and president of the National Association of Blouse Manufacturers. On his right is Mr. Yale Garber, who is the executive director of the Apparel Manufacturers Association which is the second largest association in the entire industry in New York.

For your information, Mr. Chairman, I represent the women's and children's apparel manufacturing industry in all matters touching on its economic interests. Affiliated with FAM are the nine major apparel trade associations in New York City; and through them FAM speaks for over 5,500 manufacturers of women's and children's apparel.

FAM has a vital concern in fostering the growth and development of the apparel industry, in protecting the industry from unfair competition and unfair business practices and in assuring the industry's survival.

In our testimony today we will:

One, briefly describe the nature of the apparel industry.

Two, show how the proposed lifting of the current Federal ban on homework will spell inevitable disaster for the legitimate American apparel companies; and

Three, demonstrate how lifting of the homework ban will lead to the uncontrolled proliferation of at-home sweatshops, foster the exploitation of unregistered aliens, and adversely affect every American taxpayer by broadening the underground economy.

Mr. Eagle will tell us how precisely the apparel industry becomes.

STATEMENT OF MANNY EAGLE, MEMBER, BOARD OF DIRECTORS, FEDERATION OF APPAREL MANUFACTURERS (FAM)

Mr. EAGLE. As I am sure you know, most employers in the apparel industry are small and undercapitalized. There is only a handful of large, financially strong companies. Competition is fierce; profit margins are very slim—many companies barely survive. And, there are frequent business failures.

Apparel is produced mainly by semi-skilled workers. And, because of the limited skills required, and because of the industry's concentration in New York, the Northeast and in other large urban areas, a very high proportion of the work force consists of women and minority workers.

Moreover, the products of the industry are highly susceptible to being manufactured in the home. Thus, a manufacturer can cut the parts for the garment from fabric and make the bundles into packets which can be distributed to a worker to be stitched and assembled. These bundles of fabric are light and can easily be tied into manageable bundles, which can be picked up by a worker or be tossed into the back of a station wagon or the trunk of a car and transported to the tenements, where the bundles can be turned over either directly to a homeworker, or to a tenant in the building who acts as a strawboss to distribute the bundles to other homeworkers she knows. The garments would then be sewn on sewing machines in the home, which the homeworker can easily buy, or rent from an unscrupulous employer.

Mr. Chairman, if the Federal prohibitions on industrial homework are lifted, a major U.S. industry, as we know it today, will be rendered totally unable to compete.

Here is why: Most apparel producers, both manufacturers and contractors have machinery and equipment; frequently they execute long-term leases or purchase their own buildings, which they cannot just abandon. Thus, most existing apparel producers simply cannot convert to homework, even if it made sense to permit it.

But if the Federal ban is lifted, new unscrupulous producers could and would be able to make use of homework and engage in the apparel business by making only a small, or no capital investment at all.

Presently, one American apparel producer competes against another on a relatively equal basis—both have investments in plants and equipment; both have proportionately fixed costs to absorb. If the ban is lifted, the producer who has made the investment and long-term financial commitments such as leases and purchase of equipment, to have an efficient, safe and comfortable plant, will be undercut by unfair competition from the homework employer, who does not incur the fixed costs associated with investments and commitments of this kind.

Mr. **Barnard**. Permit Mr. Steinberg on my right to give you some examples.

STATEMENT OF EUGENE STEINBERG, MEMBER, EXECUTIVE COMMITTEE, FEDERATION OF APPAREL MANUFACTURERS (FAM)

Mr. **Steinberg**. The factory owner has to provide a factory roof over the heads of his employees. The factory owner pays the energy costs of heating the plant in winter and cooling it in the summer. The factory owner provides production machinery and floor help to his workers—all at substantial costs. On the other hand, the homeworker pays for her own rent, her own energy costs, and her own sewing machine, her own lights, and her own heat. The homework employers get all that for free.

Equally important—if the homework ban is lifted, there will be no incentive for apparel producers to invest in new machinery and to develop more efficient methods of production. The homework process will reign and additional capital investment would be foolhardy. Yet with imports from slave wage labor countries overwhelming our industry, the only salvation lies in technological improvements.

Thus, competition from homework employers will, inevitably, result in reduced factory employment, reduced capital investment, severe financial strain, and ultimately wholesale business failures under the weight of unfair competition from homework.

This, Mr. Chairman, is a phenomenon which will be nationwide if the Federal homework ban in the apparel industry is lifted.

But, the problem of competitive disadvantage will be even more acute to producers located in those States which would, despite the lifting of the Federal ban, still continue their own bans on homework in the apparel industry.

There are now five States which totally prohibit homework in our industry (New York, California, Hawaii, Connecticut, and Pennsylvania) and several other States (for example, Indiana, Massachusetts and New Jersey) which prohibit industrial homework in not all, but major segments of the apparel industry.

Thus, while producers in those States having a ban on industrial homework could fairly compete with each other, they could never compete with producers located in States where homework would be legal if the Federal ban is lifted.

These competitive disadvantages would apply with equal force to both union and nonunion employers. But, the lifting of the Federal ban would ravage even more that portion of the apparel industry operating under the constraints of a union contract.

Let Mr. Garber, my colleague here, explain.

STATEMENT OF YALE GARBER, EXECUTIVE DIRECTOR, APPAREL MANUFACTURER'S ASSOCIATION

Mr. **Garber**. Companies affiliated with the Federation of Apparel Manufacturers are party to collective bargaining agreements which prohibit industrial homework.

Accordingly, even if Federal law permitted industrial homework in our industry, and even if our companies were located in States which permitted homework, we would not be able to compete, because of homework prohibitions in the union contracts.

Moreover, Federal regulations, dating back more than 40 years, have served to form, shape, and mold a way of doing business and producing apparel, from which the legitimate apparel producer is now unable to depart. These important Federal regulations have for 40 years required that apparel be produced in the factory, not in the home.

Our companies and others like them have made major capital commitments and developed marketing strategies that are nationally and historically accepted in reliance on a continuation of the status quo concerning Federal homework prohibitions. Thus, the proposed repeal of Federal homework bans would literally pull the rug out from under the entire American apparel industry—union and nonunion alike.

Mr. Chairman, as you can see, simply on the basis of fixed overhead costs alone, the legitimate factory-based manufacturer cannot hope to compete with the homework employer.

But the homework employer has a still further advantage. His labor costs, both direct and indirect, are drastically lower.

Although Federal law requires that both factory workers and homeworkers be paid at least the Federal minimum wage and receive overtime for working more than 40 hours per week, we know from historical experience, that the wage and hour laws cannot be effectively enforced in the home.

When a homework employer hires a homeworker, although nominally he hires only one person in the home he, in effect, puts the entire family to work on his goods. Thus, homework inevitably leads to child labor and to unreported and unpaid hours of employment.

Further, the homeworker knows full well that her continued receipt of work from the homework employer, and thus her income, is conditioned on her producing a finished product at a per piece cost, which is totally unrelated to the hours of labor actually performed. Consequently, to assure themselves of a continuing flow of work and income, homeworkers have no choice but to substantially underreport the actual number of hours worked during the workweek. If a homeworker ever sought payment in accordance with the law for the hours actually spent in performing work, or for a spoiled garment, she would never be given homework again.

Experience tells us that a homeworker will rarely be paid overtime even if she works 80 hours per week, and will rarely earn a wage approaching the Federal minimum, working on a piecework basis. In our judgment, the resulting wage is likely to be so low that it degrades the American way of life.

I will call on Mr. Samuel Blutter to continue with our testimony.

STATEMENT OF SAMUEL BLUTTER, PRESIDENT, DOLLY MARTIN, INC., MEMBER, EXECUTIVE COMMITTEE, FEDERATION OF APPAREL MANUFACTURERS (FAM)

Mr. **Blutter**. The Labor Department's notion that the lifting of the homework ban will actually encourage workers to report wage-hour violations is totally unrealistic. What worker, financially dependent upon a homework employer for her basic subsistence, will be brave enough to report a violation and cut off her only source of income? What unregistered alien will complain to a Federal agency about wage-hour violations, when it means possible deportation?

Now you must also bear in mind that the factory owner has indirect labor costs as well as direct labor costs.

What factory owner does not provide his workers with at least the six basic holidays with pay? What factory owner does not provide his workers with a week or two of paid vacation? What factory owner does not provide his employees a reasonable number of paid sick days or bereavement leave? These are just a few of the indirect labor costs which the factory owner must absorb and with which the homework employer gets off scot-free.

Further, because homeworkers live in fear that the homework employer will cut off their income stream, unscrupulous homework employers can and will escape various other labor related costs which the factory owner must incur. Thus, a factory owner contributes to Social Security; pays contributions to State and Federal unemployment insurance funds; provides State disability insurance; and pays the premiums for workers compensation insurance. The unscrupulous homework employer, who likely pays his employees off the books, in cash, will never have those costs.

And, the problem does not stop there. If the ban on homework is lifted, the supply of capable labor available to present producers will be reduced. Skilled operators will find it more convenient to work at home—even though they will be subject to rampant violations of law—and the labor pool of the most productive workers will be reduced. The cost to the factory owner of enticing these workers back to the factory will soar, and the factory owner will become even less competitive.

In short, the lifting of the Federal ban on industrial homework in the apparel and related industries will put the legitimate American apparel producer at such a competitive disadvantage that he will not be able to stay in business.

Mr. Barnard will now conclude our testimony.

Mr. **Barnard**. Mr. Chairman, a few short weeks ago, the Secretary of Labor came to New York City to announce a new Federal effort to crack down on violations of the Federal wage and hour laws. During that visit, the Secretary disclosed what every legitimate and decent apparel manufacturer has known for years—that unscrupulous employers, mainly nonunion and some with organized crime connections, exploit workers and operate what are commonly known as sweatshops.

Although the Secretary made his announcement in New York, there is ample evidence that serious violations of the wage and hour laws exist also among lawless apparel manufacturers in Pennsylvania, New Jersey, Connecticut, Texas, and California, to name just a few.

FAM applauded the Secretary's effort to eliminate sweatshops through swift and quick enforcement of the Fair Labor Standards Act.

Indeed, some weeks before his announcement, I personally appeared on behalf of FAM, before a committee of the New York State Legislature to condemn the proliferation of these repulsive practices which, and I quote, "add a further blow to the ability of" [law abiding] "women's and children's apparel manufacturers to compete."

At those hearings, FAM noted that "Federal legislation * * * strictly governs minimum wages, maximum hours, child labor [and] homework * * *" and that failure to comply with these Federal laws "are criminal offenses which carry both fines and imprisonment."

"If widespread violations of employment laws exist," I continued, "they can, and should, and must be cured by proper enforcement of existing laws."

What I said at those hearings bears repeating here:

"The companies affiliated with the Federation of Apparel Manufacturers perceive it as a disgrace that legitimate unionized apparel manufacturers are compelled to put up with a failure by Federal, State and city governments to enforce laws on the books, enacted precisely to prevent the kind of conditions," which the Secretary reported.

It is difficult enough—for unionized manufacturers to compete with products manufactured in legitimate non-union shops "[and]" against the background of the tidal wave of apparel imports from—countries paying slave labor wages. But FAM affiliated manufacturers must deal with two additional body blows: first government negligence in enforcing laws that elected officials were sworn to enforce and, second, the curse—of illegal operators who profit and benefit from this lack of enforcement at the terrible cost to the people whom they exploit and to the detriment of FAM affiliated manufacturers' ability to compete in the marketplace.

In light of FAM's support of the Secretary's pledge to enforce the Fair Labor Standards Act, FAM, I suppose most people, was shocked to learn of the Secretary's proposal to reintroduce homework to the apparel industry—a practice which historically fostered child labor, substandard wages, and the sweatshop—and a practice which makes it virtually impossible for legitimate factory owners to market their goods profitably. Clearly, the Secretary's proposal conflicts with his aim to abolish the sweatshop.

Strict enforcement of the Fair Labor Standards Act is imperative for FAM companies to exist. If homework is permitted, violation will be rampant and impossible to detect. The notion that Federal inspectors would locate workers homes, especially in the inner city and then gain entrance into these homes and thereafter meaningfully investigate the homework wage and hour and child labor violations I suggest to you is ludicrous.

Finally, Mr. Chairman, I would like to address myself to a subject touching on homework that does not relate to any one industry. Mr. Chairman, all of us have heard expressions of fear that our Social Security system is headed for ruin and that other transfer payments, particularly welfare and unemployment insurance, also have funding problems.

I suggest to you, however, that to a very large extent our Social Security system and the funds that sustain other transfer payment systems would not be in difficulty, or would be in far less difficulty, if our underground economy were eliminated.

Current estimates peg this underground economy at $195 billion. That is $195 billion of unreported income. Professor Peter Gutmann, of Baruch College, of the City University of New York, believes that the amount of money earned, but not reported, is sufficient to wipe out the entire U.S. budget deficit, and then some.

At least one of the reasons why the Federal Government, and five States have a ban on homework is to put a curb on this underground economy. Homework, according to all authorities, defies every attempt at monitoring. Illegal homework, already a problem, is a serious threat to the competitiveness of companies that obey the law. But, by lifting the ban, more unscrupulous employers and more unscrupulous workers than ever before would dispoil law abiding citizens by making and receiving cash wage payments and avoiding all tax obligations which are required of and paid by every decent American.

Moreover, and this is serious, while law abiding citizens are contributing to the various transfer payment systems, workers who are part of the underground economy may earn cash dollars and frequently receive on top of that a welfare check, unemployment checks, and Social Security checks to which they probably would not be entitled if they reported the work which they do.

Homework would be just one more additional incentive for the unscrupulous to engage in tax evasion. Mr. Charles C. McMann, Director of Labor Special Investigations for New York State, recently said, "We are trying to uncover those working off-the-books but we never know whether we merely have the tip of the iceberg."

Finally, I urge that this Congress take all necessary steps to resolve and eliminate the problem of unregistered aliens, who compound the homework problem by contributing so heavily to the underground economy because their vulnerability makes them such ideal targets for exploitation by the lawless and unscrupulous elements in our society. Permitting industrial homework would increase still further this kind of exploitation which stains American society with the stigma of callous disregard for human dignity.

Accordingly FAM, and its 5,500 affiliated companies, urge that you do everything in your power to maintain the existing homework ban.

On behalf of my colleagues we thank you.

Mr. MILLER. Thank you very much and to the entire panel for your collective statements. I think your statements are most interesting, given your collective experience and the experience of the members of your association in this industry, especially due to the fact that your statements appear, at least from my reading, to run exactly contrary to the finding as published in the Federal Register that was made so that this is not a major rule change and that is that the annual effect on the economy is not of $100 million or more and that there is not a significant adverse effect on competition, employment, investment or productivity, and that it would have no significant economic impact upon a substantial number of small businesses.

Now if I heard you correctly your testimony says that that is not the case.

Mr. **Barnard**. You are absolutely correct, Mr. Chairman. Our testimony said that the very opposite is true.

Mr. **Miller**. I think it will be important for members of the committee who read the testimony—I am sorry others are not here—and they may want to join in a comment on this regulation stating in fact that the finding of this association is that it is not true and that they are being somewhat, you suspect, misled. By your statements and the fact that they do run contrary to what has been passed off as a finding in the Federal Register, I assume that you were not consulted by the Department prior to the publication of this proposal for revocation of the industrial homework rule?

Mr. **Barnard**. Again that is absolutely correct. As a matter of fact, even though I do subscribe to the Federal Register I did not happen to look at that one particular issue which carried the notice. I found out through a third party that this was taking place.

Mr. **Miller**. Do you know of anybody within your industry that was consulted?

Mr. **Barnard**. No, I do not know of anyone, Mr. Chairman.

Mr. **Miller**. You represent business, is that right?

Mr. **Barnard**. 5,500 companies in the women's and children's apparel manufacturers.

Mr. **Miller**. You were not consulted?

Mr. **Barnard**. I was not.

Mr. **Miller**. Thank you.

Mrs. Fenwick.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

Do you know of any factory owners in your Federation or in the business who give out homework?

Mr. **Barnard**. I do not.

Mrs. **Fenwick**. What would you think of outlawing all homework? I mean all, not just in the seven occupations but all homework?

Mr. **Barnard**. I would like to see the existing ban reinforced if anything. As far as other areas affecting homework are concerned I would certainly want to see possibly a study conducted to determine which industries, if any, are affected, what is the extent of the economic impact of any homework that might be existing. I have not seen anything like this.

Mrs. **Fenwick**. Do you know anything about conditions, for example, in the men's shirt industry?

Mr. **Barnard**. No, I do not.

Mrs. **Fenwick**: It would be most helpful. We ought to get some people from the men's shirt industry to come before us and find out what is happening in the unregulated industries. I can remember from my old days working in the late 30's and 40's in New

York and very closely with your Federation and the unions involved. It was good. You protected a lot of good companies from fly-by-night sweatshop competition and it was really very useful; and very often, I may say, you even loaned money to those good companies who were having temporary difficulties. You remember that.

The thing that we have to find out here is if we are dealing with an evil so pervasive that we should not just be talking about those seven industries, jewelry and buttons and buckles. How about belts? It seems to me that there is something that defies commonsense here. We seem to have a temptation for those who do not wish to pay social security, who don't want to pay workmen's compensation, who don't want to pay disability, who don't want to pay all the Federal and State expenses for the employer.

We really ought to be paying some attention to the whole field. We should not be confining ourselves to these seven industries because if the situation in the number of occupations outside these seven is satisfactory, and is not causing enormous trouble, maybe these regulations should be repealed.

If, as I believe it probably is true, that there is not only illegal homework where it is forbidden but that there are very damaging working conditions where homework is perfectly legal—and in fact we have had testimony to that effect this morning that 60 percent were violations found of the wage law alone in both legal and illegal homework—if, as I say this is true, it seems to me that we ought to be considering this seriously in a broader context if we are really interested in protecting workers as well as businesses—and I may say a good and profitable business, which pays good wages and pays taxes, is a blessing to every community.

Mr. **Barnard**. I agree. Thank you.

Mr. **Miller**. Mr. Williams.

Mr. **Williams**. Thank you, Mr. Chairman.

I apologize for having to have left the committee for a brief time and for missing the testimony that was given. I have been bringing myself up to speed however on the most recent testimony.

If I may I would like to have whichever of you gentlemen is appropriate to ask you to recap the testimony for me. Let me first tell you why I am pursuing this line of questioning. As I assume you know, the Secretary has taken his action without the regulatory impact analysis which would have been required had there been a judgment that this was a major rule under Executive Order 12291. There are, as I understand, three primary tests as to whether or not the major rule classification applies. Let me go through those three tests for you, quoting from the major rule language.

Number one, an annual effect on the economy of $100 million or more. Is that classification in your judgment violated by the changing of this rule?

Mr. **Barnard**. I would like our counsel to respond to this.

STATEMENT OF JEROME B. KAUFF, GENERAL COUNSEL, FEDERATION OF APPAREL MANUFACTURERS (FAM)

Mr. **Kauff**. Mr. Williams, you can go down the list of requirements for the major rule and each one of them you will find has not been satisfied. Mr. Barnard's testimony makes absolutely clear that the annual effect of this rule on the economy would be far in excess of $100 million or more. It would devastate the American apparel industry. It would make it noncompetitive.

Mr. **Williams**. Number two then is a major increase in cost or prices for consumers. You say it will have an effect there?

Mr. **Kauff**. I don't know whether it will except I think that we are fairly sure it will not decrease the prices that the consumers will pay. The more important thing is that that is an "or" statement and it has to be taken on to the third. The third category is a significant adverse affect on competition. We have demonstrated I think conclusively that it would have a terribly adverse effect on competition. The American apparel industry and legitimate employers and law abiding employers would find it absolutely impossible to compete if this homework were permitted.

You can go to the next category. We talked about investment in productivity and innovation. All of that runs through our entire statement. Mr. Blutter reflected on the importance of the industry to innovate and substantially improve its technology. We feel that it would not be able to do so with the kind of adverse impact it would have and suffer if homework employers were permitted to operate.

I think there is one final point. That is that apparently the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration that this would not have a significant economic impact on a substantial number of small business entities. I note that in the second paragraph of the supplemental information we find that that information does not seem to square with our problem. Indeed, FAM is an organization of over 5,500 essentially small businesses. The apparel business is a business of the small businessman and it would have a devastating effect on this industry.

Mr. **Miller**. If the gentleman will yield on that point you may like to know that the Chief Counsel for Advocacy for Small Businesses at the hearings held by the Department of Labor testified in those hearings that "We believe that these regulations create a substantial economic and administrative burden." That is one view and you can agree or disagree with it. It is hard to understand how the Secretary of Labor can come back and certify that this same person gave this testimony that this does not create substantial economic impact.

I think, Mr. Williams, you are right on track here.

Mr. **Williams**. Mr. Chairman, given these conclusions and considering the source of these conclusions, I would like to request of you, Mr. Chairman, that a letter be prepared from the members of this committee willing to sign it, which I hope the chairman will be the leading signatory, to the Secretary of Labor stating that after hearing the testimony provided today we are concerned that he may be violating the major rule under Executive Order 12291 and request that he rescind his action.

Thank you, Mr. Chairman.

Mr. **Miller**. Mr. Ratchford.

Mr. **Ratchford**. Mr. Chairman and members of the panel, given the weight of the testimony which has come in thus far, which seems overwhelmingly against the change, in light of this who is pushing for the change? Where is the thrust or push for the change? I am sure it didn't drop out of the blue.

Mr. BLUTTER. We are trying to figure that out ourselves.

Mr. BARNARD. We were stunned when we saw the notice in the Federal Register and didn't quite believe our eyes when we saw it. Where it came from, sir, I can't tell you. Who hatched it I don't know.

Mr. RATCHFORD. It may have come from the other body. Has there been no public push to change this law?

Mr. BARNARD. Not to my knowledge, not to our knowledge. I don't think any of us here has heard about it.

Mr. RATCHFORD. Let me ask you this. Do you have an opinion as to the enforceability of the change, given the fact that the Department indicates that you are having difficulty with enforcement staff adequate enough to enforce the current law?

Mr. BARNARD. I would like to defer this to our counsel who again has done a little bit of studying on this subject.

Mr. KAUFF. There is little question but industrial homework will proliferate violations of the Federal wage and hour law. Moreover there is also little question but that these wage and hour laws will be almost impossible to determine for a number of reasons.

First, they will be impossible to determine because in the apparel industry Federal investigators will not even know where the work is being performed. Were they to find the work they would then have to gain entrance, and I don't know how they are going to do that, perhaps with a search warrant and I don't know what Federal magistrate is going to give them that, in the home of workers and as Senator Moynihan says, show the badge.

I don't think they are going to find it but it is going to be out there and it is going to be a major American problem if this ban is lifted. I think that the Department notion that you will be encouraging enforcement if you make it lawful is really, in Mr. Blutter's words, ludicrous. What you are going to find is people being paid in cash, off the books, contributing to the underground economy that Mr. Barnard has spoken of. You are going to have work done by unregistered aliens and they will never report violations.

In sum, we find that there was a very good reason for prohibiting industrial homework. It was a reason that employers supported and employers continued to support because the people in FAM, the law-abiding people in FAM, the people who do pay above the minimum wage and are very careful about the hours of work that workers work and very careful about reporting in the factory by timeclock and timecards, which is impossible in the home, find that if homework were permitted you would find that our industry would simply be unable to live under the weight of that kind of unscrupulous competition.

Mr. RATCHFORD. In any professional business there are leeches who will take advantage of a situation. It sounds to me what you are suggesting is that if this change comes about the leeches will then be in a position to take advantage of the weakest of the weak; is that correct?

Mr. KAUFF. You have said it best.

Mr. RATCHFORD. Can you suggest then why Secretary Donovan is pushing this change?

[No response.]

Mr. **Ratchford**. No further questions, Mr. Chairman.

Mr. **Miller**. It was actually suggested by the people who were going to be responsible for doing the time and motion studies on on how long it takes to sew one of these garments at home. They have a strong lobby here and they are working for that.

Let me thank you very much for your testimony. I think it is the most important testimony that we can receive on this action. Since I think it would be popular for many Members of Congress to believe somehow this was done because the industry requested it, because typically an action by this Secretary at this time would be construed in that fashion, I think many Members will be somewhat surprised to learn how surprised you were of this action.

We are certainly going to take the recommendation of my colleague, Mr.Williams, under consideration as we finish receiving the rest of the testimony this afternoon in terms of how poorly advised the Secretary was to take this action, how very, very important staff work was obviously done in the Department to suggest that this is an action the Secretary should take. I really appreciate your taking your time to come down here and bear with us this afternoon.

Mr. **Barnard**. Thank you very much, Mr. Chairman and members of the committee.

Mr. **Miller**. The committee will next hear from a panel made up of Mr. Steve Johnson, president of Nash Garment, Wendell, N.C. Joseph Moore, executive director, Associated Garment Industries of St. Louis, and Jack Davis, president of Davis Co. in Chesterfield, S.C.

Prior to that panel we are going to take a 2- or 3-minute break just to let people stretch.

[A brief recess was taken.]

Mr. **Miller**. Welcome, gentlemen, to the committee. Again, as has been done previously, your entire written statements will be entered into the record. So, if you want to paraphrase it, summarize it or respond to earlier testimony, we hope you will feel to do that. You can proceed. Identify yourselves for the reporter, please.

STATEMENT OF JACK DAVIS, PRESIDENT, DAVIS CO., CHESTERFIELD, S.C.

Mr. **Davis**. My name is Jack Davis. I am a manufacturer of ladies apparel in Chesterfield, S.C., and Pageland, S.C. We manufacture ladies apparel primarily dresses and some sportswear. I learned a long time ago that the simplest way to solve a problem is to do the obvious. I have a little motto that is called the KISS principle, "Keep it simple, stupid."

I would rather say "Keep it simple and stupid." If we go the obvious route it is a lot easier to solve some of our problems than it is to try to get ourselves involved and entangled.

My company sells its product not in terms of a product but in terms of a service. It is sold in terms of time because I do not sell directly to the customer. I sell through the merchandiser. Our competition is very keen, as has been previously said. I welcome this competition. I highly favor the free enterprise system. It is what made our country great and I think it will continue to give us the strength to grow. I am opposed however to anything which gives favor to one party over another. Provided that the controlling ingredients are equal investment, equal effort, equal ingenuity, I believe that I and my company can compete against anybody.

I welcome this competition because in terms of competition when it gets tough, as the old saying goes, the tough get going. I believe this competition can serve to strengthen us all.

Today, as has been previously stated, there are many sewing shops operating in many metropolitan areas employing people at less than the minimum wage. Whether they are illegal aliens who won't speak out for fear of losing their job or whatever is really not the point in question. The fact remains that this payment of a subminimum wage exists and exists illegally. I personally do not believe in going to these extremes and breaking the law.

I believe in abiding by the law and playing the game by the same competitive rules which most of us follow. I firmly believe that removal of the homeworker restrictions will encourage large scale abuse of the minimum wage law. I believe it will make it virtually impossible to audit and control the minimum wage and the child labor laws.

As an example, in my particular operation in the manufacture of ladies dresses, the time required to manufacture one dress, one unit, is approximately 25 to 40 minutes of time, depending on the product. This is done on updated equipment, the latest equipment available, a highly engineered plant, efficient work areas, and trained supervision.

The homeworker would be under a much different set of circumstances. She normally has one simple machine which does what we call straight needle sewing and in so doing would require much hand sewing, very tedious work, very time consuming work. She would be operating in an unengineered area with no supervision and that same garment requiring 25 to 40 minutes under industrialized conditions would require 50 to 80 minutes to manufacture in the home. This means that she would turn out anywhere from six to eight garments a day.

In order to justify the receipt of homework for that homeworker she must be able to produce at a lower price to the manufacturer. Otherwise there is no incentive to give that particular homeworker any work. Not only would the homeworkers be exploited by driving the price that they get paid downward but it recreates unfair competition which would be created by the subminimum wage and virtually assure that many contractors would be out of business.

In terms of the tax dollars generated by factory workers which are closely controlled and reported by employers, the abolishment of the homeworker rules and regulations would certainly decrease the amount of tax money coming in for revenue and the opportunities for the under the table wages and the unreported income will flourish and be virtually impossible to control. I can see little good, if any, that comes from the homeworker restriction removal.

However, I can see many problems if they are. I urge this committee to give careful consideration to the reasons which I have just enumerated.

Thank you.

[The prepared statement of Jack Davis follows:]

Prepared Statement of Jack Davis, President, Davis Co., Chesterfield, S.C.

My name is Jack Davis. I am a manufacturer of ladies' dresses and sportswear with two shops, one in Chesterfield, South Carolina, the other in Pageland, South Carolina. I employ 150 peolpe. I wish to express my deep concern at the proposal to lift the restrictions on homework.

I take pride in what I have been able to accomplish as a manufacturer in the garment industry. I am proud of the products I make, of the plants I manage, and of my employees and the close relationship I have with them.

Working together, we have been able to bring new jobs into our area and a measure of prosperity to our communities. We have done this entirely through our own efforts. We have never asked for help from anyone, and I think I can fairly say that what we have been able to achieve is a tribute to America's free enterprise system.

My industry—the garment industry—is a very model of free enterprise. It is extremely competitive. It may even be the most competitive industry in the United States. There are no Exxons or General Motors, only small businessmen and entrepreneurs like myself. I am told that there are thousands of manufacturing plants similar to mine in operation across the country. That is quite a number. But, frankly, I welcome the competition. It means we must always be on our toes, turning out a product that our customers are willing to buy. I am confident that I can meet the challenge of any competitor. I ask only one thing: that the rules be fair, that my competitors be willing to meet the challenge from me.

That is why I am here today. I am alarmed that the proposed change in the homework regulations will give an advanage to those who are unable or unwilling to meet the challenge of honest competition. Permitting homework to take place in the women's apparel industry would allow violations far in excess of the problem we face today from illegal homework. Honest employers would be at a severe disadvantage and in the end, the bad would drive out the good. The law-abiders, operators of efficient and productive factories, would be forced to close their doors, not because of their own mistakes but because others were breaking the law.

It would be like a football game in which only one of the teams would be penalized for clipping and interference. In that kind of situation, I don't have to tell you who would win.

I say this because I know that if homework in the women's apparel industry is permitted to flourish as it did some 50 years ago, it will be abused. Such a result in inevitable. Homeworkers will not receive the minimum wage. I cannot stress how certain I am of this. In my business there is constant pressure to keep costs as low as possible, and ours is an industry where wages are a key element of competition. It is just too easy to evade the minimum wage law in a homework situation, since the only truly effective policeman for determining how long someone works is a timeclock—and timeclocks are not and cannot be installed in the home.

The Secretary of Labor says he expects wage and hour laws will be easier to enforce without homework restrictions. He believes workers would be more likely to step forward to report violations of minimum wage provisions, but quite the opposite is true. With the widespread cheating that would inevitably occur, workers who risked reporting violations would immediately lose their jobs to others willing to remain silent. It goes without saying that illegal aliens working in the home would not turn themselves in by reporting violations.

Let me conclude by saying that I work hard to keep my plants running efficiently, so that I can make a profit, pay my employees a decent wage and meet the competition. I try to live up to my responsibilities, and I resent any employer who will not make an effort to do the same, who would attempt to undersell me by breaking the law and paying his workers less than the minimum wage. He is illegitimately taking business away from me. He is illegitimately taking jobs away from my employees.

STATEMENT OF STEVE JOHNSON, PRESIDENT, NASH GARMENT, WENDELL, N.C.

Mr. Johnson. I feel like the actor who got up to give his best performance but somebody stole his lines as he was fixing to say them. I don't think there is anything I can say that has not been said today that will make any change in anybody's feeling about this situation. We are totally opposed to it.

I represent 600 employees in eastern North Carolina. One thing that has been overlooked today is that there has been a lot of talk about the minimum wage but, you know, there are a lot of factories, including ours, that pay above the minimum wage and I feel these factories would be the first to feel the brunt of any type of change in the regulations as they stand today because our wages would dictate that we could not be as competitive if the work was given out to homeworkers where it would be made at substandard wages.

I will be happy to answer any questions that you might have of me but I don't think any further testimony will help the situation.

[The prepared statement of Steve Johnson follows:]

PREPARED STATEMENT OF STEVE JOHNSON, PRESIDENT, NASH GARMENT, WENDELL, N.C.

I wish to enter my opposition to the ending of homework regulations in the women's garment industry. My name is Steve Johnson and I am the President of five children's wear shops in North Carolina employing approximately 600 people.

The apparel business differs from other higher paying industries in many respects. One of these is its attitude toward regulation. Elsewhere, business is frequently up in arms against government regulations, but in the garment industry employers like myself and my employees agree to the need for regulating wages through a minimum wage law, time-and-a-half provisions and child labor prohibitions. Without them, what we would have is not an industry but a jungle. We'd lose what we have and further improvements would be impossible.

Yet now we are faced with a strange proposal by the Secretary of Labor to lift the 40 year old restrictions on industrial homework in order to help workers and the industry. I believe this is an example of seeing the trees but not the forest, if not being blind to realities altogethr. If homework restrictions are lifted, a few workers might be helped in the short run, but the other workers and many, many employers would be hurt—including the very workers and their small business employers who were supposed to be helped in the first place.

The reason is simple: no new jobs would be created by eliminating the homework regulations. All that would happen is that work would be moved from one place to another. With your permission, I would like to trace those flows for you.

Let's begin with the current situation. As an employer, I pay income taxes, social security taxes, unemployment insurance, workers' compensation, disability, etc. as my contribution to our society. Then there are health and sanitation laws which require further expenditures. I also pay for machinery and materials (i.e., needles, thread, etc.) in my plant and upkeep, heating and lighting, and insurance. I am leaving out a number of expenses.

What would happen with legalized homework? The first thing is that many employers would take the work away from their factory employees and send it to homeworkers to cut costs. They would gain an immediate competitive advantage because they wouldn't be paying for sewing machines, materials, electricity, fire insurance and so forth. The individual homeworkers would bear these costs. Homeworkers could even be charged for spoilage, even though this is now a cost picked up by employers. As a result of these savings, work would automatically flow from shops to homes and many present employers who chose not to use homeworkers would be forced to cut back production and employment and then be forced out of business.

But what I've just described is only the first debilitating step in this ongoing process. For as surely as night follows day, the increased use of homework will lead to increased violations of our minimum wage and hour law, to the point where the law is undermined. Why? Because there is a vast pool of workers who have to take whatever they can get in order to survive. Many of these people are American citizens living below or around the poverty line. Many are illegal immigrants. Even with a minimum wage of $3.35 an hour, these people will work for $3 an hour or $2.50 an hour or $2 an hour. I have heard of cases where people worked for as little as $0.50 an hour. These are the people who will finally get the jobs because there is no way of checking if employers are paying homeworkers the minimum wage or time-and-a-half for overtime or if children are used in the work. And none of these workers will report violations for fear of losing the meager jobs they have.

This is the bottom line: Many employers now paying the minimum wage or more will not be able to stay in business. The women's garment industry will become an industry that forces many legitimate firms out of business, leaving only the most unscrupulous to survive.

Let me add one final observation: I can think of no worse time to consider lifting the restrictions on homework. The economy is far from healthy and more than seven million people are unemployed. What is more, there are millions of illegal aliens eager to take jobs no matter how low-paying. Some people have said that restoring homework will return us to conditions that prevailed around the turn of the century, but I believe that under current conditions it would be worse than that. People at the turn of the century had certain rights; much of the potential workforce for industrial homework will have no rights at all, and employers wishing to take advantage of them will find it easy to do so. Therefore, I urge opposition to any attempt to weaken the present homework restrictions in the apparel and other vulnerable industries. Instead, the most realistic course would be to strengthen enforcement of our laws to deal with the violations already taking place, especially in low wages industries like apparel.

Mr. MILLER. Mr. Moore.

STATEMENT OF JOSEPH MOORE, EXECUTIVE DIRECTOR, ASSOCIATED GARMENT INDUSTRIES OF ST. LOUIS

Mr. MOORE. I feel the same as Mr. Johnson. I think everything that can be said has been said here. However I wish I had been able to say all of the things that Senator Moynihan was able to say because he really I think did a good job.

I want to say this. I am going to introduce myself as Joe Moore, executive director of the Associated Garment Industries of St. Louis, representing manufacturers in eastern Missouri and southern Illinois. The firms that I represent are all small businesses, I might say all union shops. We don't consider anything approaching the minimumm wage as being a fair wage in our area. We are all well above the minimum wage. I will say that operators and skilled workers are probably double the minimum wage. I also feel that if Secretary Donovan's proposal to abolish homework should come into effect it will definitely hurt our industry. I speak from firsthand knowledge of what happens because I was one of the child laborers back in the late 1920's and 1930's who worked in the home.

My mother and two aunts were told that they were not quite up to factory standards by a manufacturer. Incidentally these manufacturers in those days, and it will be the same now, don't have factories as such. They have cutting rooms and they give out the work to be sewn. When they refer to time studies in the factory to make sure that the homeworker got the same scale, this is laughable because they don't have factories, they don't have time studies, they don't have engineers. They give out the work and, as I remember it, they give out the work and give a quantity of work telling the operator that unless you can make that number of garments in one day—in our case it happened to be dresses—you won't be able to get any more work.

Now during the busy season when the manufacturer had reorders to fill he increased that quantity. I can remember on many occasions that my mother and my aunts worked all night long in order to get out their quota. They did not want to run the risk of not being able to get that homework.

The norm was 11 to 12 o'clock at night. I was going to St. Mathews elementary school at the time. When I came home from school I did every chore possible, turning belts, turning collars, running errands, getting thread, getting whatever happened to be needed. I was the go-for in other words. That is where I learned to run a sewing machine. It had a good effect. I finally wound up in the manufacturing business. But after 1933 when homework was first abolished my mother and two aunts found that they were perfectly capable of meeting the standards to go into the shops and work and subsequently my mother went into the manufacturing business and continued as a successful manufacturing business until she retired.

My two aunts continued to work as operators, union operators, until they retired, both serving as presidents of their various locals.

The condition of homework does not exist in the St. Louis, eastern Missouri, southern Illinois area, does not exist today. When I mentioned to some of our manufacturers that I had been invited to come here they thought I was kidding. I said: "You did not read the Federal Register." They said "No; we are not in the habit of reading that." They thought I was kidding. They thought it was impossible, unheard of. What about wage and hours?

Several of the manufacturers had sent me copies of the article that said Secretary of Labor Donovan visited the shop and found a 90-year-old woman there, and a 10-year-old girl. The feeling is that if homework is allowed what will happen is that not only one 10-year-old but there will be hundreds of these 10-year-olds and there will be all of the 80- and 90-year-old people that they can get who will be working and not in cottage shops but they will be tenement shops.

Cottage sounds very dignified but they will be tenement shops. In spite of New York's finest, that drunk will still be on the streets. If Secretary Donovan thinks with a reduced staff he is going to police all of these various homes he is sadly mistaken. It is just unbelievable in our opinion that anything like this could even be proposed. As I said, my people just thought that it was a waste of time to come here because nothing like this could happen but I assured them that it is going to happen unless somebody says something about it.

I think I will conclude in that because to read my entire statement which I hope will be made a part of the record would be a repetition of many things that have been said here and I realize time is running

Thank you for inviting me.

[The prepared statement of Joe Moore follows:]

Prepared Statement of Joe Moore, Executive Director, Associated Garment Industries, St. Louis, Mo.

Let me introduce myself. My name is Joe Moore and I am Executive Director of the Associated Garment Industries of St. Louis, Missouri, representing the women's apparel industry for southern Illinois and eastern Missouri. I personally have 40 years of experience in the garment industry. I am here to express my opposition to the proposal of the Secretary of Labor to permit homework where it was previously restricted. This step will open the door to wholesale violations of the wage and hour law. If there is anyone who believes that the minimum wage law can remain effective when homework becomes widespread in the women's apparel industry, as it will be if Secretary Donovan succeeds in removing the existing homework regulations, let me quickly disabuse him of that notion. There is no way.

It is impossible to check the amount of hours a homeworker actually works. Homeworkers are supposed to maintain homework handbooks to record their work hours (as well as the type and the amount of the work they do, the piece rate and the wages received). As is well known to the Department of Labor, these records are falsified time and again or else are not maintained. Short of keeping a federal inspector in every homeworker's house, there is no way of assuring how long a homeworker works, what he or she earns, and whether work that is reported as having been produced by one person is not, in fact, the production of two or more persons.

Furthermore, since the workers are paid by the piece, there is no way to assure that a worker would in fact be paid the minimum wage even if the piece rate is fairly determined to yield to the average worker the legal minimum or more. Workers very tremendously in skill and speed. Some can earn twice and sometimes three times as much per hour as others working at the same piece rate under standard conditions in a factory, under supervision, with close instruction as to the most efficient way to handle the work in a standardized work environment. In short, under the best of factory conditions, there is no way of preventing wide variations in the earnings of workers. But, in a factory, if a piece worker fails to earn the legal minimum wage, the worker is given make-up pay to the legal wage.

With homework, make-up doesn't exist. Conditions under which industrial homeworkers have to labor differ widely, varying from home to home or from room to room; and if there is no way of devising a factory piece rate system that guarantees a particular level of earnings, it is absolutely impossible to do so in a home. Cheating by homeworkers is therefore inevitable and the minimum wage law becomes meaningless.

You can forget about the enforcement of the child labor prohibition now contained in the law. When work is done at home, there is no way of knowing how many people are actually doing the work and whether children are used. Unless a federal inspector is assigned to every home where industrial homework is carried on—an obvious impossibility—the temptation to use child labor is enormous. Instead of doing their schoolwork, children would be used to do factory work in their home.

Homework is an open invitation to law-breaking on many levels. It is really a throwback to an earlier, primitive time. If homework in our industry is to be given out without restrictions, as Secretary Donovan proposes, small businesses, such as those for which I speak, will have a hard time surviving. Unfair competition with homeworkers will drive many legitimate garment manufacturers out of business.

Recently an article appeared in newspapers throughout the country telling how Secretary Donovan joined in a raid on a Chinatown sweatshop. There they found a 90-year-old woman working for $1.00 an hour. If such conditions exist now, consider how much worse it would be if homework were permitted. There would be absolutely no controlling it.

I know exactly what would happen if homework restrictions were lifted in the garment industry. When I was a boy attending elementary school my mother and two aunts worked in their basements doing homework because they had been told they were not capable of working at factory standards. They were also told they had to produce so many garments per day in order to continue receiving this homework. During the time when reorders were being filled, this quantity was increased so the manufacturer could fill his reorders. As a result, I remember them working all night long on numerous occasions and the norm was until eleven or twelve o'clock at night. After school I helped out by running errands, turning collars and belts and whatever other little jobs I was able to do.

In 1933 when the NRA came into effect and homework was prohibited, my mother and two aunts were accepted readily into the factories. As it turned out, they were perfectly capable of working at factory standards.

Sometime later my mother went into the manufacturing business on her own and operated a successful factory until her retirement.

My two aunts continued working in the garment industry until they retired, both serving as presidents of their local unions.

Secretary of Labor Donovan and his reduced staff would do well to spend their time trying to eliminate illegal sweatshop conditions that are now in existence rather than trying to expand them.

Thank you for your time and I hope you will consider the facts I have given you.

Mr. MILLER. Thank you. I want to thank you for bearing with us through a long morning. Being a Member of Congress I have had my lines stolen often by Members, so it is not new. I think it is important for the record again that you are here and I think it is very important, as we start to pull together the case against this, due to the fact of the area of the country that you come from and again the fact that you are contractors in this field is going to be very important as we present our case to the Congress for support and hopefully to the Secretary to get him to change his mind.

He has to understand that the ramifications of this are far beyond some emotional response to finding what everybody knew existed in any case in terms of the sweatshop.

If I understand what you have said, not to put words in your mouth, you also, as the previous panel, have some concern about the competitive impact of this on your respective organizations and the companies that you run. You don't think everybody is going to be playing by the same rules at that point, just as I assume the large concerns in the urban areas find that the sweatshops run a competitive edge on them. This is nothing more than the simple violation of fundamental law of this country. That is a competitive edge. You either choose to violate the law or you choose not to. It is not a question of homework or not homework. It is not what is at stake here. It is a question of enforcement of the Fair Labor Standards Act.

Mr. Kildee.

Mr. KILDEE. Mr. Chairman, I apologize for not being here on a regular basis. I was in another committee and on the floor giving a speech, so I have no questions at this time.

Thank you Mr. Chairman.

Mr. MILLER. Mr. Ratchford.

Mr. RATCHFORD. Mr. Chairman, first a statement going back to the observation by the gentleman from Michigan. I would hope as a result of this hearing that you would develop a letter that could be signed in a bipartisan fashion directed to the Secretary suggesting that he back off in this area, because I have not seen anything to lead me to believe that this change means anything other than disaster and it should be abandoned at the earliest possible date.

I am just curious. We asked the other panelists, is there anyone in your part of the country who is pushing for this change?

Mr. MOORE. Absolutely not.

Mr. JOHNSON. No.

Mr. DAVIS. I can't refuse to answer that. They are probably crooked and they would not come forth anyway.

Mr. RATCHFORD. I have no other questions. I think you have well covered it, Mr. Chairman.

Mr. MILLER. Were any of you or your organizations that you belong to consulted prior to this?

Mr. MOORE. No.

Mr. JOHNSON. No.

Mr. DAVIS. No.

Mr. MILLER. Have you been consulted since other than this public notice?

Mr. MOORE. No.

Mr. MILLER. Thank you very much. Thank you for your time.

Next the committee will hear from Sol Chaikin, president of the International Ladies' Garment Workers' Union, AFL-CIO, accompanied by Evelyn DuBrow.

STATEMENT OF SOL C. CHAIKIN, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, ACCOMPANIED BY EVELYN DuBROW, VICE PRESIDENT; MAX ZIMNY, GENERAL COUNSEL; AND DR. LAZARE TEPER, SPECIAL ASSISTANT TO THE PRESIDENT OF THE UNION

Mr. CHAIKIN. Thank you very much. May I, although obviously not necessary, introduce the vice president of the International Ladies' Garment Workers' Union and our Washington representative, Ms. Evelyn DuBrow; to my right, General Counsel Zimny and to his right, Dr. Lazare Teper, most recently our research director and now special assistant to the president of our union.

Gentlemen, we have asked permission to have entered into the record my own prepared testimony which I will not refer to or read at this point but more particularly and more importantly the supplements which accompany that testimony. One is an extraordinary piece of work which came into being back in 1941 at or about the time that the Congress and indeed the Executive and then Secretary of Labor was considering industrial homework in the apparel industries and which, if I may be permitted, hardly an exaggeration, say immodestly is the definitive work on industrial homework. Accompanying that is a supplement which I think has very successfully brought up to date many of the issues, much of the evidence, much of the statistics which accompanied that extraordinary piece of work back in 1941.

I would like in the interest of brevity to take just a few moments to speak extemporaneously about this extraordinary posture in which we now find ourselves. While it may be true that we are not generally of the same political persuasion as the Secretary of Labor, those of us who represent working people have come to understand that regardless of which administration it might be and regardless of how partisan a particular cabinet member may be, that if the interests of working people in the United States were being seriously considered for a change, for improvement, for amendment, that at some stage of the game some gentle inquiries might be made as to how we think the particular administration might move, in which direction, to what extent, et cetera.

In spite of the protestations from the Secretary when I met him on a number of occasions, that "The door is always open and we want your input and we ought to get to know each other a lot better," it came as a shock to me to read in the New York Times that he has proposed in the Federal Register doing away with the ban on industrial homework, particularly in our industry.

Mr. MILLER. You read it in the Times?

Mr. CHAIKIN. That is correct. I cannot tell you with what degree of shock and dismay that intelligence came to me. Incidentally what I have just told you I said to him in a very, very short note of about two or three sentences and I did not permit myself to expand on those comments because I do want to maintain a very decent relationship with the Secretary because we have many concerns in the labor movement.

We represent in our own ILGWU hundreds of thousands of members and I am a vice president in addition to the AFL-CIO, and a very active one I might add, so we are concerned with the effect that these administrative acts have on enforcement of labor legislation across the board involving millions of American workers and their families. Let me say simply that one of the reasons for my shock and dismay is that I am a product, a son of two people who came over as immigrants individually from the old country and were taken by the hand in New York City and introduced to the then sweatshops of the day.

I have lived through a part of my parent's life until they joined a union, until they held their hands out together with others to struggle against the oppression and the exploitation and the almost man's inhumanity to man in a particularly difficult industry back in 1921 and 1914, through the struggle of the early unions and with the cooperation of employers who were beginning to see a little more light, beginning to have a little greater understanding about the manner in which they should comport themselves with their own employees and particularly with the help of elements in the community who were people of the middle class, women who were members of church groups, in the League of Women Voters, in the Trade Union Unity League, whose politics were totally different from the politics of our earlier pioneers and whose economic interests may have been entirely different from the interests which we espoused but who nonetheless had an understanding and an awareness that there were certain things that existed in the then community of the 1920's which were evil, evil on its face.

One of the evils was industrial homework because it called to attention many other supplementary and accompanying evils. It was not just the people sweated at home in dark, dank, dirty quarters with little or nothing to say about what their work was worth, their sweat was worth, their effort, their intelligence, their vigor, but their children were involved. Children who should have been at play, children who might have been at school, were involved.

Their very dignity as human beings was trampled upon because there was no mutuality between the person who supplied the work to be done at home and their own circumstances. And the words "Take it or leave it" sound simple and clear and clean but they do not convey the demeaning posture, do not convey the brutality, do not convey the desperation that these workers felt because they had to do this work.

In time with States attempting at one time or another to regulate this evil, the Federal Government began to check, to investigate, to call for hearings, to call for position papers, because again the Government recognized that what could not be controlled by individual actions, by individual States would be better controlled by legislation across the board.

After all the garment industry regardless of where it is located, the garments, the products of that industry are sold in a national market and whether you produce garments in Seattle, Washington, or in Alabama, or in Brooklyn or lower California or in the way stations in between, those garments compete against each other, because it is an extraordinarily labor intensive industry, because an inordinate percentage of the selling price of the produce is due to direct labor and wage costs and the edge of a couple of pennies is meaningful when that garment is sold to a department store and in turn sold to the ultimate consumer. Also it is an industry of extraordinarily small employers.

I would like to say it is one of the last bastions of free competitive democratic capitalism in this country. There are oligopolies, monopolies, no combinations of extraordinary conglomerate capital. The competition is fierce and the competition is burdensome on a legitimate basis, and here I speak of employers in the industry regardless of whether they are union or nonunion, regardless of whether they are in the Deep South or in the Sun Belt or whether they are in the older cities of the Northeast or Midwest, there is no "Legitimate employer who can compete against the unscrupulous exploitative lawbreaking employer who uses industrial homework."

I relate it to the days when my parents told me about the stories of the evil of homework, stories that I thought were legendary because in my own experience beginning as an organizer in 1941 and 1941 I rarely came across these cases, and I have worked in the Southwest part of the country, Texas, Oklahoma, Arkansas and Louisiana, and in every State in the Northeast on the part of our union, until only very recently, and Senator Moynihan referred to the fact that the new emerging sweatshops and its attendant handmaiden, industrial homework at home, is almost a recent phenomenon, 5 years ago, 7 years ago, 8 years ago.

Our union complained to the Department of Labor. Our union complained to the regional offices where compliance officers were in attendance and where our record is second to none in going public with the facts of the new emerging sweatshops, we took into sweatshops scores of reporters. We managed to get in some sweatshops television teams.

We encouraged national network television to zero in on what we considered to be a new American problem. We were expecting this Department of Labor and this Secretary to take greater cognizance of what was going on because it was on the upgrade. And it is not true that this enforcement has failed in this area because if we had not had what enforcement we had the problem would have proliferated to a much, much greater extent.

I was reminded of the fact that over the last decade or two crime in the United States has increased almost immeasurably. Recent figures show there are more homicides, more rapes, more robberies, more felonies. What do we do in that event? Do away with the laws? Cut down on the number of policemen? Cut down on the criminal justice system? No. I think compliance is pretty good. I think the record of our industry is that most of the employers are honest and decent and legitimate even though they may be very tough and even though too many of them may be nonunion. We are talking about something separate and apart from that.

We are not talking about the real world when we talk about homework in the United States at this time. If you think in terms of amount, in terms of a pastoral, bucolic setting, in terms of a handful of women who do some hand knitting at home with elements of folklore and craftsmanship involved, with the fireplace, and the nice mantle and the dog lying in front of it, with a couple of little toddlers amusing themselves on the floor, that is not the picture of industrial homework in the United States of America.

The Secretary of Labor is proposing to reintroduce the sweatshops that have been emerging in the last 5 to 7 years in lower California, along the Texas border, in the greater metropolitan area of New York, moving through the Midwest to Chicago where they exist now and where they ought to be rooted out and where there is a possibility of doing something about them, because they are in fixed places—I wish that Mrs. Fenwick and Mrs. Roukema were here to listen to me describe them in their home State of New Jersey where you find real sweatshops, 100 or 200 feet off to the side of a back country road in their particular congressional districts—the Secretary of Labor by proposing a revocation of the ban on homework intends to move these sweatshops into the kitchens of the borough, into the dark, dank, dirty corners of the ghettos of our major cities across America, and there working at the machines will be women who will be seated, helped by their children if they are old enough to do minimal chores pertaining to the construction of a dress or another item of apparel.

There they will be exploited horribly. I was beside myself when I heard one of the technicians in the Department of Labor say that since they understand that work would be given to workers at home on a piecework basis and that the piecework system has no relationship to being paid by the hour and how will you know whether this woman who worked on a piecework basis earned a minimum of $3.35 an hour if the employer says "Here are a hundred pieces and we are going to give you 25 cents a piece?" He says "we are going to teach our compliance officers to learn time and motion study."

If it weren't such a serious business I would have broken out laughing. Ours is a piecework, section work operation generally, whether union or nonunion. In any particular season there must be upward of 175,000 different styles of garments. If you do it on a section work basis, there are anywhere from 8 to 28 sections in a garment that have to be put together. Our own union using an inordinate number of business agents or business representatives per hundred workers with all of the assistance we get from rank-and-file leaders who are skilled in their work, have a devil of a time negotiating with legitimate employers what the value of any particular operation may be on any specific style at any specific time.

It is impossible to conceive the Department of Labor in anyway having a relationship to reality going into the homes of individual workers to ask what is the piece rate and to figure out whether that piece rate should return $3.35 for an hour's application of time and effort, et cetera, et cetera.

It just can't be controlled. It can't be controlled and that is why in 1941 the Government of the United States said in the apparel industries that it must not be legalized. Nothing that has happened since 1941 to this very present moment has mitigated the possibilities of exploitation, done away with the probabilities of child labor, done away with the horrendous exploitation which existed during the 1920's and the early 1930's or the horrendous exploitation which is taking place today in those dark, dank, dirty quarters of our ghettos and our rural areas and rural slums, which are just as bad as big city slums.

In no way is it any less horrendous today than it was then with one additional fillip. In those days homework was mostly done by American citizens or, if people were not yet citizens, at least residental aliens. We did not then in the 1920's, in the early 1930's, have this extraordinary problem of the creation of a new underclass in the United States, the undocumented worker, who, no matter how badly exploited, who may earn 50 cents an hour, $1 an hour, maybe a $1.50 an hour as the value of the work, feels that is far superior a happenstance than what was available to them in the interior of Mexico, in Colombia, in Haiti, in Santo Domingo, or all of the other countries for which this great country of ours is such a magnet.

People crawl and people risk their lives and they break laws in order to get here and they consider even being exploited as they are that their future might be better here than it is there. That being so, it is no excuse for a Secretary of Labor to take advantage of their extraordinary need and to make legal what should be an illegal undertaking. Then to add on top of that the fact of cutting the budget, cutting the number of compliance officers, and then very piously saying this is a method which will engender greater enforcement, flies in the face of logic, flies in the face of fact, and is just as much a fairy tale as that press release that was uttered, that famous press release that read in my view like a hurried dime novel and the only thing that was missing from the press release was some half nude women, you know, to attract somebody's attention to the press release, made of whole cloth, dramatized beyond understanding.

There is no way that the Secretary of Labor can color his activity with the cloth or coloration of need, logic, service to the community. We object, Congressman Miller, to the manner in which it was done. We agree wholeheartedly with the employers who testified and their legal counsel that the very basis for this order has not been met, that it is poorly devised and poorly advised and we have urged the Secretary to withdraw it and we would commend the members of this committee who would do likewise.

Thank you very much.

[The prepared statement of Sol Chaikin follows:]

PREPARED STATEMENT OF SOL C. CHAIKIN, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Although the question before this Committee—the matter of industrial homework—is of crucial concern to me, in my capacity as President of the International Ladies' Garment Workers' Union, I only learned of the proposal to legalize homework in an indirect fashion. While I was out of town and away from my office, the media began to call our headquarters for comments on the proposed action of Secretary of Labor Donovan. My first reaction was flat disbelief. It was simply incredible that any Secretary of Labor would seriously propose in the year of 1981 that we encourage a return to the practices of 1881—practices that marked the most miserable ages of industrial inhumanity and that were outlawed four decades ago wherever they existed in the women's apparel industry. I was especially unable to believe that such a rumored proposal would be made at the very moment when unscrupulous employers, leaning heavily on undocumented workers, were reintroducing the sweat shop to the apparel trades. Why, at this time would any Secretary of Labor want to reinvite industrial homework—the worst form of sweating our industry ever knew?

Unfortunately, it turned out that the media people were right. Secretary Donovan was proposing to lift industrial homework restrictions in women's apparel, knitted outerwear, embroidery, and several other industries where the practice had been legally forbidden—precisely because prohibition was the only way to deal with the evil of homework.

All doubt about the intentions of the Secretary of Labor were resolved when, on May 5, 1981, an official announcement appeared in the Federal Register. He did wish to end the ban on homework.

Presumably, this decision was motivated by hearings held in Burlington, Vt., in January 1981, and in Washington, D.C., in February 1981, which hearings dealt with the current status of homework in the United States. From these hearings, the Secretary concluded that "the elimination of the regulations (banning industrial homework) would make it more likely that homeworkers employed in these industries would report such violations (of labor laws) without fear of losing their employment."

This conclusion—central to the Secretary's recommendation—totally ignores decades of recorded experience with industrial homework in periods when it was legal, certified, observed, and analyzed. Indeed, it was precisely these years of accumulated agony that compelled the Government to outlaw industrial homework.

Industrial homework has always been a way to violate the law with nearly total impunity. For instance, when laws were passed prohibiting industrial employ of children below a certain age, employers shifted to homework. The reason was obvious. If children of illegal age were employed in the factory, either a Government inspector or the union or some worker could lodge a complaint. But when an employer farmed out work to an adult worker to be taken home to be finished, the employer could readily disclaim responsibility if the woman who took the work home had her children work on the garments. An that is precisely what happened. As that great American poet Edwin Markham wrote in 1907—when homework was legal—"The children are called in from play to drive and drudge beside their elders. The load falls upon the ones least able to bear it—upon the backs of the little children at the base of the labor pyramid."

And who is it that calls the children "in from play?" It is the parent, of course—not the employer. Will this parent then turn herself in for violating the law by employing children?

Another example. Various States passed factory laws, especially after the gruesome Triangle fire in our industry. The object was to reduce the danger of fire and unsanitary conditions. To evade those laws, employers turned to homework. If the work was done—as it was—in filthy kitchens, in rat holes, in firetraps, the employer could disclaim all responsibility. Are we to expect that the worker at home would register a complaint about her work environment when her worksite is her home?

So it went. A law was passed to counter abuses in the factory and the reflexive action of many employers was to use industrial homework as a way to evade the law.

To argue—as the Secretary of Labor does—that legalization of homework would encourage enforcement of the law is to fly in the face of all experience and to reject the conclusions of common sense.

This is particularly true in the light of what happened during the period of the National Recovery Act when a massive effort was made to establish standards by codes for separate industries. The NRA codes sought to establish standards affecting wages, hours, and child labor. Most codes in an industry where homework was widespread banned it because it was widely understood that if homework were to be permitted and remain unregulated, it would not be possible to maintain the proper labor standards.

Every study of the experience in industries where homework was legalized—operating under certification with stringent controls—reached the same conclusion: It was not possible to regulate homework.

The Bureau of Women and Children of the Pennsylvania Department of Labor conducted an exhaustive study that showed 79.3 percent of the certificated homeworkers violated the law. The study concluded:

"Homework can never be regulated. No matter how stringent the regulations, how great the enforcement, how honest the investigators, the sweatshop conditions will continue to exist unless homework is abolished. The conditions which exist are an integral part of industrial homework and only when processing of articles in employees' homes is abolished can the conditions growing out of this system of production disappear."

A separate study by the U.S. Children's Bureau reached the same conclusion:

"Under the National Recovery Administration great gains were made where the codes prohibited the giving out of homework. But in the industries in which homework was still permitted, even though limited by certain regulations, the ancient evils continued to exist and to constitute a menace to the higher labor standards that had been achieved for factory workers."

The Women's Bureau did a separate study in Rhode Island, once more reaching the same conclusion:

"Effective regulation of homework is impossible," they reported. 'The prevention of child labor is practically impossible under a system of industrial homework. It is a temptation in families that eke out their existence by homework to increase their pitifully small earnings with the aid of even very small children."

A special commission appointed by the President to prepare "an adequate and final review" of the effects of the administration of title 1 of the National Industrial Recovery Act reached the expected conclusion:

"NRA came to believe in the abolition of industrial homework, both because of its disastrous social and competitive effects and because of the difficulties it created in the way of establishing effective control and regulation of the terms and conditions of employment. The provisions failed most conspicuously in regulating hours of employment and child labor. It was found that only complete prohibition could eradicate the evils of industrial homework."

It is important to note the two reasons why the National Recovery Administration concluded that it was necessary to abolish homework. First, homework made it impossible to enforce the industrial codes regulating hours, wages, and child labor. Second, homework had disastrous "competitive effects.'

Employers using homeworkers paid less. They were able to undercut legitimate employers. In a kind of industrial Gresham's Law where bad money drives out good money, bad employers drove out good employers.

That's why good employers—and, by that I mean employers who lived within the law—joined readily in the move to abolish homework.

Obviously, the legalization of homework is not a way to enforce industrial laws; it is—as it always has been—a way to violate those laws.

And the violations will be many.

We have a minimum wage law. That law stipulates a certain wage on an hourly basis. To check on whether a worker is getting the minimum, it is necessary to known how many hours the employee worked in return for her earnings.

In a homework setting, it is impossible to keep such a count of hours worked. Who will keep it? Obviously, the employer cannot. The worker in the home is expected to keep such a record, but how can this be done accurately when the worker does not spend all the time to work but moves from the machine to her dishes, to her laundry, to her cooking, to her shopping, to talk on the telephone.

We have laws on occupational health and safety. We try to enforce these either on the basis of complaints from workers or through factory inspection. Obviously, no such enforcement is possible in a homework system. Shall the homeworker register a complaint against herself for a leaky ceiling, a broken down toilet, a lack of ventilation, bad lighting, no heat? Besides, wage and hour inspectors cannot check every home in the country to determine whether several workers performed the work reported as work of a single person. To do that virtually every home would have to have an inspector posted there and we still would not know about other homes where work is done off the record.

We have child labor laws. To catch a child at work, an inspector would have to make a sudden appearance at a home, break in without warning, and seize the offender—with no witnesses but himself.

We have laws that call for taxes on earnings and additional taxes for social security, workmen's compensation, and employment insurance. When work is moved into the home, these would not be paid.

The first thing likely to happen is that homeworkers will become one of the biggest items in our hidden economy, that off-the-books economy that runs on cash only. Under homework, it is just too easy to bootleg. The employee brings in the finished work; the employer pays in cash. He avoids all taxes; she avoids all taxes. They both feel that they are ahead of the game at the expense of Uncle Sam.

Of one thing, we may be certain: Any employee being paid under such a system is not likely to register a complaint against her employer for not paying taxes—for she is as guilty as he is.

Add one other dimension to this scene: The presence of undocumented workers (illegal aliens) who—in their desperation—are ready to work for a pittance, without any fringes, and off-the-books.

Homework is a simple way to violate the law without fear of pnishment: no minimum wage, no overtime, no limit on hours, no health and safety measures, no taxes. To legalize such homework is to multiply violations.

The weight of accumulated experience and the application of simple commonsense make perfectly clear that homework is an evil that cannot be "regulated" and that most certainly cannot be cured by complaints from workers caught in the system. What, then, is the basis for the recommendation of the Secretary of Labor?

The implication is that he is taking into account "changes in economic conditions" that surfaced at recent hearings. He implies this without a summary of the testimony or an analysis of its contents.

Let us, then, look briefly at some of the evidence submitted at those hearings:

At a Washington hearing in February 1981, Joe Razo, Director of the Concentrated Enforcement Program of the California Division of Labor Standards Enforcement, testified:

"I have yet to find a homeworker in Los Angeles County, Santa Clara County and San Diego County that has been paid minimum wage. It varies from $0.39 all the way to $2.25. I have yet to find someone who has been paid higher than $2.25."

And that,

"The history of California shows that we have not been able to regulate homework and to successfully allow homework to occur by giving the employee a certificate or allowing the contractor to pay the employee's licenses, and to eliminate exploitation at the same time."

Ms. Roberta F. Orticerio, Administrator of the Division of Labor Standards, Rhode Island Department of Labor, testified:

"When we have interviewed homeworkers we have found that they are paid 10 to 70 percent of the prevailing minimum. So far we have identified these problems: failure to pay minimum pay, failure to pay overtime premiums, undocumented employees, untaxed earnings, and depressed rates undercutting competition."

Similar testimony on the nature and extent of minimum wage and other labor law violations resulting from industrial homework was also put on the record in the course of Labor Department hearings held in Burlington, Vt., in January 1981.

State officials have repeatedly indicated the impossibility of enforcing standards where homework is involved. Donald De Fillippi, Assistant Director of the Division of Regulation of Wages, Connecticut Department of Labor, stated:

"Where homework is being performed, there is absolutely no way to prevent the circumvention or evasion of and to safeguard the minimum wage."

He also explained why the number of homework permits in his State have dropped:

"According to Mr. Alex (Director of the Division of Regulation of Wages), the permits were practically eliminated because of abuses which worked to the employer's advantage and to the homework recipients' disadvantage. The advantage for the employer was an unfair advantage over his competitor by not being required to furnish space and utilities. Invariably, the homework recipient picked up the work, processed it, and delivered to the employer. The disadvantage was an impossibility to determine who or how many people were involved in the actual performance of the work because in a good many cases the work was supposedly performed in the evening after the children had been put to bed, but actual investigation revealed that in many cases the children were kept out of school to help with the homework because of a tight piece-work rate."

Hearings on industrial homework were held in April 1981 by the New York State Department of Labor. Frank Mercurio, Regional Administrator of the Employment Standards Division of the United States Department of Labor and co-chairman of the hearing, remarked on the "alarming increase in illegal homework relating to the manufacturing industries." He noted with regard to industrial homework:

"We know there are gross and widespread violations of Federal and State statutes currently existing . . . When we are made aware of the many uses (sic) found in the making of the goods in those restricted industries where work is illegally performed at home, where there is no control or record of work, which invariably results in workers receiving less than the minimum wage, minors may become involved in dangerous activities with needles and scissors and razors or sewing machines."

The reasons why homework must be restricted are as valid today as they ever were. In fact, in two respects they are even more valid. First, there is a huge body of illegal aliens who are the natural prey for such a system. Second, the cash economy is widespread today and payment off-the-books is a common practice. These two facts make homework more dangerous and difficult to regulate than ever before. All of the evidence—past and present—demonstrates the overwhelming need to maintain homework restrictions. Indeed, never has the need been so urgent.

INDUSTRIAL HOMEWORK

(Research Department, International Ladies' Garment Workers' Union)

Introduction

Industrial homework has been prohibited with limited exceptions in seven industries as the only means to enforce the minimum wage, maximum hour and child labor standards provided in the Fair Labor Standards Act. Homework was prohibited in these industries -- jewelry, gloves and mittens, knitted outerwear, women's apparel, buttons and buckles, handkerchiefs and embroidery -- approximately forty years ago because the Wage and Hour Administrator found it impossible to regulate such work.

Industrial homework in these industries dropped off sharply after the ban and scant attention by Federal and state authorities was required. Recently, however, as industrial homework has begun to increase, the Secretary of Labor has proposed that the prohibitions be lifted so as

> to take into account changes in economic conditions which have occurred since the homework Regulations were promulgated.

And,

> to the extent that mimimum wage and overtime violations presently exist in the seven restricted industries ... it (is) more likely that homeworkers employed in these industries would report such violations without fear of losing their employment.[1]

While the Secretary of Labor calls attention to changed economic conditions and the expectation that violations of FLSA would be duly reported by the workers concerned, a study of American labor law by the U. S. Department of Labor in 1967 observed that,

> Industrial homework was not started to give the homeworker a chance to earn money at home; it was the employer's device to get his work done more cheaply and under less regulation

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[1] Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, "Employment of Homeworkers in Certain Industries", *Federal Register*, Vol. 46, No. 86, May 5, 1981, pp. 25108-25109.

> than in a factory. He assumed little or no responsibility for his employees; he could hire them at his convenience when work was heavy, but simply say 'No work,' when it was slack -- a much simpler process for him than trying to get his employees to work overtime on some occasions and laying them off on others.
>
> From the financial angle the system was of great advantage to the employer. He saved in rent, gas, electricity, heat, and water. He paid little for equipment. He paid for completed work only, by the article, and often at extremely low rates. While there were thus distinct advantages to the employer who used homeworkers, all other persons involved suffered....
>
> Homework defied regulation, and therefore poor working conditions and poor health standards have continued to flourish wherever homework itself was continued. No corps of inspectors has ever been or could be sufficiently large to inspect all the homes often enough to prevent widespread violation of child labor, minimum wage, or maximum hour standards, or to enforce safety and health provisions.2/

The Department of Labor analysis concluded that the only beneficiary of industrial homework is the employer of homeworkers.3/ Fair-minded employers become the victims of unfair competition from employers who pay lower wages, no fringes and who have lower overhead costs. The standards of factory workers are threatened so far as hours, wages and safety are concerned. The homeworker's income, in may cases, has to be supplemented from the public till. Homeworkers are subject to long hours, low pay, no protection for illness, disability or unemployment, while their children are exposed to child labor.

This paper supplements a detailed analysis of the homework problem prepared forty years ago by the Research Department of the International Ladies' Garment Workers' Union.4/ It examines the historical findings in the light of subsequent developments and traces the homework problem since its prohibition in 1941-1943. A copy of the earlier analysis is included as an Appendix to this report.

2/ United States Department of Labor, Growth of Labor Law in the United States, Washington, D. C., 1967, pp. 265-6 (hereafter Growth).

3/ ibid., p. 265.

4/ Lazare Teper and Nathan Weinberg, Aspects of Industrial Homework in Apparel Trades, Research Department, International Ladies' Garment Workers' Union, July, 1941. (Subsequent references to this paper will be cited as Aspects).

Homework Legislation and Regulation

Efforts to legislate against homework began 100 years ago. The earliest state legislation dates back to the 1880's and 1890's.[5] In the 1930's there was a nation-wide effort to eliminate homework under the National Recovery Administration codes.[6] Homework was prohibited by 101 NRA industry codes and an additional 17 codes regulated such work. Twenty-one of the 22 codes relating to apparel contained some homework provision.[7] A presidential executive order in May 1934 permitted homework by persons who were unable to work in a factory because of physical disability or age, or who were required to care for an invalid in the home.[8] The NRA was declared unconstitutional by the Supreme Court in 1935 and,with the end of federal controls, a number of individual states were stimulated to adopt new or stronger homework curbs.[9]

Passage of the Fair Labor Standards Act in 1938 ushered in a new era. The legislative history of the Act clearly indicated that Congress intended to cover homeworkers and the Administrator of the Wage and Hour Division clarified the application of the Act to homeworkers as follows:

> Since the Act contains no prescription as to the place where the employee must work, it is evident

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5/ Aspects, 19 ff.

6/ ibid., 23 ff.

7/ Similar historical information is found in Growth, op. cit., pp 266-268.

8/ U.S. Department of Labor, Wage and Hour and Public Contracts Divisions, Employment of Homeworkers Under the Fair Labor Standards Act, July 1959, p. 15. (Hereafter cited as Employment.)

9/ ibid., p. 16.

> that employees otherwise coming within the terms of the Act are entitled to its benefits whether they perform their work at home, in the factory or elsewhere.[10]

Pursuant to Section 11(c) of the Act, the Administrator issued regulations in 1939 prescribing record-keeeping procedures for homework, including a handbook to be maintained by homeworkers in which hours of work, pay and other pertinent information were to be recorded. These procedures, however, were found by the Labor Department to be ineffective and hearings were held to consider appropriate remedial steps:

> The Divisions (Wage and Hour and Public Contracts) found that the special record keeping regulations established under section 11(c) of the Act for homework had not been effective in controlling hours and wages in a number of industries in which homework was prevalent. An exceptionally high rate of violations of the minimum wage, overtime pay and child labor provisions of the Act continued in these homework industries. These conditions led the Administrator to consider restricting homework in a number of the industries in which violations of the Act had been a particular problem. The Administrator was empowered, under Section 8(f) of the Act of 1938, to include in the industry wage orders issued by him such terms and conditions as he found necessary to carry out the purpose of the wage orders.
>
> A series of public hearings extending from 1941 through 1943 were held for seven industries in which homework was most prevalent and in which violations of the Fair Labor Standards Act had been a problem. These were the jewelry, knitted outerwear, gloves and mittens, button and buckle, embroideries, handkerchief and women's appar

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[10] Interpretive Bulletin No. 1, "General Statement as to coverage of Fair Labor Standards Act, Section 7," First issued November 1938, cited in ibid., p. 18.

> industries. The Administrator found that the evidence developed at each industry hearing showed that adequate records of hours for the homeworkers had not been maintained. Without these records there could be no effective enforcement of the minimum wage or overtime provisions of the Act. This situation had resulted in the homework furnishing a ready means of circumventing and evading the provisions of the Fair Labor Standards Act.[11]

As a result of the hearings, the Administrator in 1941, 1942 and 1943 issued regulations prohibiting industrial homework in the seven industries where industrial homework was most prevalent.[12] As with the NRA code provisions, exceptions were made for persons unable to adjust to factory work because of age, mental or physical disability or because presence at home was required to care for an invalid. The exemption applied only to those who had been engaged in homework prior to the date the regulation became effective in a given industry (the date could be waived if it caused a hardship).

The homework prohibitions were tested in the courts. In Gemsco, Inc. v. Walling, 324 U.S. 244 (1945), the Supreme Court upheld the authority of the Administrator to prohibit homework under the Act. The validity of continuing such regulations once a single statutory national minimum wage took effect in 1945 was upheld by U.S. District Courts (Walling v. Wolff et al. d/b/a Marlice Emblem Company 63 F. Supp. 605 (1945) and Walling v. Cimi Embroidery and Novelty, Inc. 63 F. Supp. 601 (1945)).

11/ ibid., p. 19

12/ 29 CFR 605, September 13, 1941; 29 CFR 607, October 18, 1941; 29 CFR 617, April 18, 1942; 29 CFR 621, August 26, 1941; 29 CFR 625, September 26, 1942; 29 CFR 628; January 27, 1943; 29 CFR 633, September 3, 1943.

When Congress adopted the 75 cent minimum wage in 1949, it added a new subsection (d) to section 11 of the FLSA, providing that all existing regulations and orders of the Administrator were continued in full force and effect. The new subsection read as follows:

> The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of, and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force. (emphasis added).

Since the 1949 FLSA Amendments, the Administrator has made no substantive changes in the homework regulations.

The homework regulations, from the beginning, tried to preclude evasion by incorporating a broad, encompassing definition of "industrial homework" as

> the production by any person in or about a home, apartment tenement, or rooom in a residential establishment, for an employer, of goods from material furnished directly or indirectly for such employer.[13]

Because of attempts to evade the regulations through various arrangements between employers and employees, the Administrator gave this section a broad interpretation, which was upheld by the courts. In 1951, when the established interpretations were written into regulations for the knitted outerwear industry, the Administrator explained his past actions as follows:

> The Administrator is of the opinion that the regulations were intended to apply to all employment in home work whereby goods are produced for or on behalf of members of this industry, regardless of the source of the materials used by the homeworkers, and has been enforcing the regulations on the basis that homeworkers employed in this industry were subject to the act and the regulations whether they produced directly for an employer or distributor, or under a so-called "purchase and sale"

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[13] 29 CFR 617.101, April 18, 1942.

> or "agency" arrangements or other devices designed to disguise the employment relation. The fact that the regulations have been so construed and enforced has been well known to the members of the industry through the institution of court proceedings by the Administrator and the Secretary of Labor (Tobin v. Wagner, infra; Tobin v. Harwood, 10 W. H. Cases 73 (W. D. Tenn.); Tobin v. Van Wagemen-Bager, Inc. (N. D. N. Y. No. 3129)), and through court decisions upholding such construction (Tobin v. Harwood, 10 W. H. Cases 73 (W. D. Tenn.); cf. Walling v. Wolff, 63 Fed. Supp. 605 (N. D. N. Y.)).

> The definitions were modified to read:

> "Industrial homeworker" and "homeworker," as used in this part, mean any employee employed or suffered or permitted to perform industrial home work for an employer.

> "Industrial home work," as used in this part means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.[14/]

In 1955, identical definitions were incorporated into the regulations for the other 6 restricted industries to conform to the existing practice of the Administrator.[15/]

In addition to the court decisions cited by the Administrator when he amended the regulations in 1951, a number of additional court decisions have affirmed the Administrator's broad interpretation of persons covered by the homework regulations. These decisions related to the Administrator's rulings that homeworkers were employees and not independent contractors and that purchase and sales agreements cannot avoid the employer-employee relationship.[16/]

[14/] *Federal Register*, April 20, 1951, pp. 3435-3436. *Tobin* v. *Harwood* was subsequently affirmed 194 F. 2d 538 (6th Cir. 1952). Further affirmation came in *Goldberg* v. *Whitaker House Cooperative, Inc.*, 366 U. S. 28 (1961).

[15/] *Federal Register*, June 17, 1955, p. 4243ff.

[16/] Cases related to independent contractors were: *Walling* v. *American*

Apart from the Federal controls, many individual states have adopted homework laws and/or regulations. Eighteen states and the District of Columbia and Puerto Rico now have some form of homework legislation.[17/]

The state laws vary widely. For example, California prohibits homework in the manufacture of all articles of wearing apparel. New Jersey bars homework on infants' and children's wearing apparel. The Massachusetts law prohibits homework on outergarments and undergarments (except hosiery and women's millinery). Some state laws require homework certificates or contain other administrative provisions but do not specifically prohibit homework.

Needlecrafts, Inc. 139 F. 2d 60 (6th Cir. 1943); Walling v. Twyeffort, Inc., 65 F. Supp. 920 (S. D. N. Y., 1946), affirmed 158 F. 2d 944 (2nd Cir. 1947); Mitchell v. Nutter 161 F. Supp. 799(N. D. Me., 1958). Cases related to purchase and sales agreements were: Jacobs v. Hand Knitcraft Institute 2 L. C. 144 (S. D. N. Y., 1939); McComb v. Homeworkers' Handicraft Cooperative 176 F. 2d 633 (4th Cir. 1949); Walling v. Freidlin, 66 F. Supp. 710 (M. D. Pa., 1946).

[17/] Bureau of National Affairs, Labor Relations Reporter, SLL 1:141 (Jurisdictions with homework legislation: California, Connecticut, District of Columbia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin and Puerto Rico).

Homework and Enforcement

Industrial homework was banned in the seven designated industries in the early 1940's because it was impossible to enforce the minimum wage, overtime and child labor provisions of the Fair Labor Standards Act. In the years that have passed, the evidence continues to show that this is still the case.

In the late 1950's the Wage and Hour and Public Contracts Divisions became aware of a number of serious homework violations. As the Divisions described them:

> One employer engaged in beading slipper vamps on a contract basis for slipper manufacturers was found to have paid 264 homeworkers less than the minimum wage rate. The violations extended over a two-year period and the underpayments amounted to more than $150,000. Additional amounts were found owed for overtime underpayments. Another firm illegally withheld approximately $12,500 from 32 homeworkers, several of whom were illegally employed minors, in a two-year period.

To determine whether such violations as the foregoing were isolated instances or represented patterns of widespread noncompliance, the Divisions in 1958 and early 1959 conducted surveys of 2,635 establishments employing 22,580 homeworkers.[18/]

Extensive violations of the Fair Labor Standards Act were found in the 2 years covered by the survey. Of the 22,580 homeworkers, 3,711 individuals were paid below the minimum wage and 800 individuals were underpaid for overtime work. Ninety-four children were found to have been illegally employed and 79 of them lived with adult homeworkers.

[18/] Employment, p. 1

Of the total homeworkers surveyed, 6,744 did not have the record-keeping handbooks required by law.[19]

A recent Illinois survey of homework showed similar widespread violations. In July and August of 1979, compliance officers conducted 109 investigations, which showed:

41 establishments in violation of one or more labor laws

349 violations of the Industrial Home Work Law

315 violations of the Illinois Minimum Wage Law

1 violation of the Illinois Child Labor Law

40 violations of Wage Payment and Collection Act

58 violations of the Illinois Six Day Week Law

$32,540.20 in back wages due employees [20]

The widespread violations found in the Illinois surveys were corroborated by testimony given by a number of state officials at hearings held in February 1981 by the United States Department of Labor in connection with its review of its homework regulations. Joe Razo, Director of the Concentrated Enforcement Program of the California Division of Labor Standards Enforcement, testified:

> I have yet to find a homeworker in Los Angeles County, Santa Clara County and San Diego County that has been paid minimum wage. It varies from $.39 all the way to $2.25. I have yet to find someone who has been paid higher than $2.25. [21]

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[19] ibid., pp. 41, 46 and 48.

[20] Illinois Department of Labor, The Illinois Industrial Homework Law/Federal Homework Regulations, March 1, 1980, p. 16 (hereafter cited as Illinois).

[21] U.S. Department of Labor, A Public Hearing to Commence Labor Department Review of "Homeworker" Rules, Washington, D.C., February 17 and 18, 1981, p. 412 (hereafter cited as D.C. Hearing).

And, that,

> The history of California shows that we have not been able to regulate homework and to successfully allow homework to occur by giving the employee a certificate or allowing the contractor to pay the employee's licenses, and to eliminate exploitation at the same time.[22]

Ms. Roberta F. Orticerio, Administrator of the Division of Labor Standards, Rhode Island Department of Labor, testified:

> When we have interviewed home workers we have found that they are paid 10 to 70 percent of the prevailing minimum. So far we have identified these problems: failure to pay minimum pay, failure to pay overtime premiums, undocumented employees, untaxed earnings, and depressed rates undercutting competition.[23]

Similar testimony on the nature and extent of minimum wage and other labor law violations resulting from industrial homework was also put on the record in the course of Labor Department hearings held in Burlington, Vermont in January 1981. Joseph Armer, Director of Labor Standards, New York State Department of Labor, reported on violations uncovered in his state:

> We operate on a complaint-only basis. During the past two years we have investigated seventy-four employers in New York City and we found utilization of illegal industrial homework in forty-four of these complaint investigations, and these investigations included knitted outerwear. Strict standards were used in establishing charges against the employers. I believe that many of the employers in the group who were not formally charged may also have been utilizing industrial homework.[24]

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[22] ibid., p. 417.

[23] ibid., p. 118. (In reply to a question, Ms. Orticerio testified that by "prevailing Minimum" she meant the minimum as of a given date, p. 136).

[24] U.S. Department of Labor, Public Hearing to Commence Labor Department Review of "Homeworker Rules", Burlington, Vermont, January 13 and January 14, 1981, p. 123f (hereafter cited as Vermont Hearing).

He also commented on minimum wage violations:

> We feel that many of the people who are working in the sweat shops conditions in New York City may very well be receiving less than minimum wage....
>
> In my view, strict industrial homework laws and regulations are needed if we are to protect the minimum wage rights of employees who are doing homework legally or illegally.25/

State officials have repeatedly indicated the impossibility of enforcing standards where homework is involved. Donald De Fillippi, Assistant Director of the Division of Regulation of Wages, Connecticut Department of Labor, stated:

> Where homework is being performed, there is absolutely no way to prevent the circumvention or evasion of ... the minimum wage.26/

He also explained why the number of homework permits in effect in his state has dropped:

> According to Mr. Alex, (Director of the Division of Regulation of Wages) the permits were practically eliminated because of abuses which worked to the employers' advantage and to the homework recipients' disadvantage. The advantage for the employer was an unfair advantage over his competitor by not being required to furnish space and utilities. Invariably, the homework recipient picked up the work, processed it and delivered to the employer. The disadvantage was an impossibility to determine who or how many people were involved in the actual performance of the work because in a good many cases the work was supposedly performed in the evening after the children had been put to bed, but actual investigation revealed that in many cases the children were kept out of school to help with the homework because of a tight piece-work rate.27/

25/ ibid., p. 137.

26/ ibid., p. 145.

27/ ibid., p. 144.

Hearings on industrial homework were held in April, 1981 by the New York State Department of Labor. Frank Mercurio, Regional Administrator of the Employment Standards Division of the United States Department of Labor and co-chairman of the hearing, remarked on the "alarming increase in illegal homework relating to the manufacturing industries".28/ He noted with regard to industrial homework:

> We know there are gross and widespread violations of federal and state statutes currently existing.... When we are made aware of the many uses (sic) found in the making of the goods in those restricted industries where work is illegally performed at home, where there is no control or record of work, which invariably results in workers receiving less than the minimum wage, minors may become involved in dangerous activities with needles and scissors and razors or sewing machines.29/

A statement at the New York hearing by New York State Senator Franz Leichter noted:

> The practice of industrial homework is a bad system that continues to flourish, particularly in the manufacture of women's apparel, due to lax enforcement of state and federal law, the existence of thousands of easily exploitable workers, and the greed of certain manufacturers who don't care about the working conditions under which their garments are made.
>
> Abuses associated with industrial homework, which include lack of supervision, no inspection of working conditions, and no enforcement of health and labor laws, are just the tip of the iceberg of the current unsafe and unlawful conditions and practices in New York City's approximately 3,000 sweatshops.30/

28/ New York State Department of Labor, Public Hearing on Industrial Homework, New York City, April 2, 1981, p. 4 (hereafter cited as New York Hearing).

29/ ibid., p. 5f.

30/ ibid., p. 23f. (the statement was read by an aide, Thomas Tedeschi).

Ms. Alice Ruotolo, Chairman of the Youth Employment Committee of the Consumers League of New Jersey, testified about homework violations in New Jersey based on reports received from Commissioner John Horn of the New Jersey Department of Labor dealing with its Industrial Home Work Task Force:

> The Commissioner stated that this special division had inspected more than 200 establishments and recovered over $100,000 in back wages from these 200 establishments for employees who were not paid the proper minimum wage rates nor overtime.[31/]

Failure to pay minimum wage and other labor law violations have also been attested to by the homeworkers themselves. At the hearings held by the New York Department of Labor on April 2, 1981, two workers testified at length about their work at home and the subminimum wages they received for such work. One woman, identified as Sarah, stated that in August 1979 she was paid $2.50 to make a blouse that took 2 hours to make or $1.25 an hour. She was also paid $5 to make a skirt that took two hours to make, or $2.50 an hour.[32/] At the time, the legal minimum wage was $2.90 an hour.

Another sewing machine operator testifying anonymously at the same hearing asserted that she was being paid $1.30 to make a dress and that it took from 2 to 3 hours to do so.[33/] Her average hourly earnings would thus range from $.43 to $.65 per hour at a time when the legal minimum was $3.35 an hour.

31/ D.C. Hearing, p. 42f.

32/ New York Hearing, p. 65.

33/ ibid., p. 86.

Apart from the violations of law stemming from venality of employers using homeworkers, many problems flow from the nature of the process itself. Of paramount importance is the inability to determine accurately, and properly record, hours of work when performed in a home. In a factory situation, work is continuous and supervised. By contrast, homework is sporadic and unsupervised. Homeworkers will stop their tasks to answer telephones or doorbells, to deal with children in the home, to handle kitchen chores, have a coffee break, etc. Under these conditions no worker knows how long has been spent in performing actual work as compared with the time elapsed from start to finish.

Consider these statements made recently by homeworkers:

> I knit for a while, get up and do something else.[34]
>
> My room where I do my knitting is large and comfortable. Everything is handy, including tea and food. I even have a TV.... I also have a telephone.[35]
>
> One cannot say it takes a certain amount of time for a hat everytime.... The phone might ring, or the dog has to go out.[36]

Short of having an inspector with the skill of an industrial engineer recording the time spent on work as distinguished from time spent on other activities -- phones, meals, children, pets -- there is no way to have an accurate record of hours worked under homework conditions.

Even though homeworkers are supposed to keep track of hours they worked, and the amounts they earned at the piece rates at which they were paid, these records (and even recollections) are frequently poor and incorrect. When the sole record is kept by the employer there is no way to determine or establish what the homeworker did in fact earn. And even the employer records are frequently done poorly and incorrectly. The potential for error and fraud is obvious.[37]

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[34] D.C. Hearing, p. 459.

[35] ibid., p. 474.

[36] Vermont Hearing, p. 242.

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[37] 29 CFR Part 516, reissued July 1, 1967, last amended February 12, 1975.

Worker Complaints and Enforcement

In proposing to eliminate Regulations 29 CFR 530, the Secretary of Labor expresses the belief that permitting homework would encourage homeworkers to report violations.[38] State labor department officials, however, present a contrary point of view.

Joe Razo, Director of California's Concentrated Enforcement Program stated:

> To me, homework is just a means of not paying not only workers' comp, minimum wage, overtime, and utilizing child labor but also paying directly in cash so that you do not give an itemized statement to the individual.... Millions of dollars are not only lost but also to the federal government in terms of taxes.[39]

Reporting on 109 investigations by compliance officers of the state's Industrial Homework Law, Billie Ann Pilling, Superintendent of the Labor Law Enforcement Division of the Illinois Department of Labor, concluded:

> These violations were found as a result of no complaints. I feel the violations are out there; it's more a point of being able to go out and find them, to identify them.[40]

William Clark, an Assistant Commissioner in the New Jersey Department of Labor and Industry, reported recently on the revival of industrial homework in his state in recent years, essentially through the increased use of undocumented foreign workers.[41] John Horn, New Jersey's Labor and Industry Commissioner, reported at considerable

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38/ See Note 1/ above.

39/ D.C. Hearing, pp. 412-413.

40/ Illinois, p. 90. See p. 11 above for the investigation's findings.

41/ The Press, Atlantic City, New Jersey, May 1, 1981.

length on the results of a five-man task force he established in 1980 to investigate industrial homework abuses. Summarizing Horn's conclusions, a New Jersey paper reported:

> In Illegal operations, the homeworkers are poorly paid and the working conditions are not checked.... Many employers pay the foreign homeworkers in cash, not only evading state and federal income tax, but also cheating the workers of legitimate social security and unemployment compensation benefits. The foreign-born workers, particularly those working in the lace, applique and garment industry, are proud people who refuse to go on welfare rolls, preferring to labor long hours for low wages.[42]

That unscrupulous employers are able to prey upon the fears of undocumented workers has also been called to public attention by a Frank Mercurio, U.S. Regional Administrator, Employment Standards Administration:

> Homeworking is a perfect vehicle for utilizing and taking advantage of undocumented workers, it has been disclosed through investigations....the amount of illegal industrial homework appears to be substantial and essentially unchecked.[43]

Stressing that the U.S. Labor Department feels it "important to maximize enforcement activity for the protection of all workers", the Department's

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42/ The Sunday Star-Ledger, Newark, New Jersey, April 12, 1981. See also testimony of Gloria Gil of the National Association of Commissioners on the Status of Women, Vermont Hearing, p. 191.

43/ New York Hearing, pp. 6, 25.

New York Regional Employment Standards Administrator in effect contradicted the assumption of the U. S. Secretary of Labor that workers will report FLSA infractions voluntarily. He declared:

> We find that the people engaged in homework activities could be welfare recipients, collecting unemployment insurance, people could be on compensation. This makes it rather difficult for these people to come forth in the event they are not being paid the appropriate minimum wage and overtime.44/

Undocumented workers are not the only ones who will not rush to complain when their wage and hour standards are violated. This is also the case with families using child labor, individuals working off the books for a variety of reasons, persons with daytime factory jobs, not to mention the basic fear that complaining could result in loss of a job. Mrs. Ruotolo, whose comments on other aspects of homework have been cited earlier, has observed:

> Exploited by their employers, they (homeworkers) are unable to defend themselves. And fearful of losing even their small incomes or being deported if they are undocumented aliens. They continue to work in silence, often under subminimum rates.45/

* * *

Massive evidence -- federal and state government studies, investigations by private agencies and the testimony of many witnesses -- makes it clear that industrial homework cannot exist without widespread and serious violations of minimum wage, hours, child labor and health and safety laws.

The evidence shows that the threat posed by homework to the welfare of homeworkers and factory workers alike can be dealt with effectively only

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44/ New York Hearing,op. cit., pp. 7-8.

45/ D. C. Hearing, op. cit., pp. 39-40.

through continued prohibition in the seven restricted industries. This is the considered judgment of leaders in areas deeply affected by the homework problem.

Tom Bradley, Mayor of Los Angeles, a city reported to be rampant with industrial homework,[46] has urged "complete abolition of industrial homework and... proper implementation of enforcement". He pointed out that industrial homework fosters

> Unfair competition to legitimate entrepreneurs who do [redacted] keep records and who do [redacted] comply with the labor laws; not only on wages and hours but on witholding taxes, Social Security contributions, Unemployment Insurance taxes, Workers Compensation coverage; all of which are practically non-existent under homework conditions [47]

Along the same lines, State Senator Joseph B. Montoya of California, declared:

> Industrial homework creates an underground economy that deprives government of its fair share of taxes and means an unfair incremental cost to legitimate business people. It allows one party to both create lower fixed costs of operation and concurrently forces competitors to pay higher costs. Like a virus, once it begins, it is hard to bring under control and eradicate.... A direct relatioship exists to the wide spread use of illicit industrial homeworkers and the minimum wage. Ongoing surveys reveal that many shop operators violate the minimum wage law. They contend that they must because of the fiscal advantage enjoyed by persons using industrial homeworkers.[43]

Another such comment comes from the Managing Director of the Chinatown Planning Council in New York, who deals with homework problems in New York's Chinatown. The Council's Managing Director, Charles P. Wang, stated:

> Our information is that in a number of cases of both jewelry and women's apparel, small children assist the

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46/ See, for example, Los Angeles Herald-Examiner, January 18, 1981 article on homework, fourth in a series of sixteen articles on sweatshops in the Los Angeles garment industry.

47/ Letter dated January 8, 1981 to Henry T. White, Jr., Deputy Administrator, Wage and Hour Division, U. S. Department of Labor, Vermont Hearing, Exhibit 7g.

48/ Letter dated January 13, 1981 to Henry T. White, Jr., ibid., Exhibit 7y.

> parents in doing such work at home.... As far as earnings are concerned, the typical homework in no way comes close to receiving the minimum wage they are supposed to be paid. If they work long hours, they are not (paid) time and a half for work over 40 hours....
>
> These practices endanger the payment of the legal minimums to workers in our area that work in the factories.... Totally aside from the absolute need to check the occurrence of home work situations, we hope that your Department will succeed to increase its enforcement staff. In our view home work really permits the unscrupulous employers to evade the laws in the hope that inspections by your division will not take place. While it does permit some people to make a few dollars, in turn it threatens the livelihood of those people who are paid at least the minimum wage and also endangers the welfare of the employers who abide by the law.49/

Reflecting the views of prominent Chinese-Americans associated with the Chinatown Planning Council, the above comments take on a special significance in view of the Secretary of Labor's April 24, 1981 visit to New York's Chinatown and his comments on the violations of FLSA he reported he found there.50/ Mr. Wang's approach is completely different. He speaks of the need for tighter control of homework through more stringent inspection and does not suggest that victims of wage and hour violations in Chinatown would report them to the Department of Labor.

Furthermore, the economic circumstances of workers who fall prey to industrial homework have not changed since the regulations were first promulgated. Only names, places and, often, places of origin have changed. Nor is there evidence on which to accept the conclusion that homeworkers "would report ... violations without fear of losing their employment."

49/ Letter dated January 29, 1981 to Henry T. White, Jr., ibid. Exhibit 7 nm.

50/ New York Times, April 25, 1981.

If the Department of Labor's "primary concern" is truly to protect workers "from the illegal payment of subminimum wages, regardless of the workplace", it will desist in its efforts to remove the ban on homework and strengthen, rather than decrease, its inspection staff to insure full compliance with the wage and hour provisions of the FLSA.[51]

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[51] Quotations are from the U. S. Department of Labor's notice of its proposal to remove the ban on industrial homework, cited in Note 1/ above.

ASPECTS OF INDUSTRIAL HOMEWORK
in
APPAREL TRADES

by

Lazare Teper and Nathan Weinberg

INTERNATIONAL LADIES' GARMENT WORKERS' UNION
RESEARCH DEPARTMENT
July, 1941

The problem of industrial homework, always serious in the apparel trades, took on new urgency with the passage of the Fair Labor Standards Act. Though a declining method of production, homework was given a new lease on life when Federal regulation of wages and hours put a premium on a system of production which defies all attempts at regulation.

Historically, homework has been utilized as a means of defeating legislation designed to raise labor standards. The conditions which such legislation sought to abolish were banished from the factory, only to find refuge in thousands of scattered homes. Long after child labor, night work by women, and unhygienic working conditions had largely disappeared from mill and workshop, they persisted in the slum tenements and rural dwellings where homework was performed. Periodic investigations of homework have evoked outbursts of public indignation at the conditions revealed. To the question of what could be done about the evils of homework, the answer of every investigating agency has been a call for the abolition of the system itself. A mistaken notion of what would best serve the welfare of the homeworkers, however, has almost always led to a decision to allow time for adjustment to factory methods of production. The administrators charged with keeping the evil within bounds through regulation, pending the time when the universally accepted goal of abolition would be achieved, have invariably reported that their efforts were futile.

Meanwhile the homework system has been on the decline. Unable to meet the competition of more efficient factory production, it has sought to perpetuate itself by constantly forcing downward the standards of the homeworkers. Thus those on whose behalf abolition of the system has been postponed have found their conditions going from bad to worse. But as factory efficiency grows the decline of homework continues, no matter to what depths homework wages are reduced. Its decline is interrupted only when the raising of factory standards, coupled with the impossibility of controlling the conditions of homeworkers, gives new impetus to the practice. Homework today has been reduced to the status of a marginal method of production existing only on the fringes of a few industries where technological advance has not yet rendered it impossible. The present diminished extent of homework makes relatively easy the adjustment to a universal system of factory production. Thus the ground has been cut from under the now ancient plea that more time must be allowed before making an end to the homework system.

Though much reduced in the extent to which it is utilized, industrial homework retains its capacity for harm. Even where practiced on a small scale its damaging effects make themselves widely felt in the highly competitive industries where homework persists. Employers see in it a destructive method of unfair competition. Factory workers find it a constant menace to their hours, wages and working conditions. The homeworkers themselves feel that it is a method of perpetuating their poverty by depriving them of opportunities for more remunerative factory employment. The public bears the burden of the system through the necessity of supplementing through relief and charity the woefully inadequate wages paid by homework employers. Public policy with regard to hours, wages and child labor, as expressed by Congress and the State legislatures, is thwarted through the impunity with which homework defies regulation.

In the following pages an attempt is made to trace the experience of a single industry, the manufacture of women's garments, with homework. What this experience shows is the natural evolution of the industry from a homework to a factory basis; the forces operating to delay the complete disappearance of homework; the failure of attempts to regulate the inherent evils of the homework system; and the ease with which the transition to factory production was made where serious efforts toward abolition of homework were undertaken.

The history of clothing manufacture in this country is essentially a history of evolution from household occupation through industrial homework to factory enterprise.

In the early days of the Republic, the production of clothing was confined in the main to the homes of the potential wearers.* Only those who were well situated had their garments made by tailors and tailoresses or imported the clothes from abroad.** Although isolated instances of ready-to-wear production in this country were reported during the eighteenth century***, clothing manufacture did not become solidly established until the 1820's. The original stimulus to manufacture of clothing ahead of demand was provided by the needs of the sailors whose stay in port was frequently limited; later, the demand was fostered by the needs of the emigrants to the newly discovered California gold fields and by the demand of the Southern plantation owners for clothing for themselves and for their slaves.* An 1832 report stated that "it has become usual of late years for most of the tailors to keep on hand a large stock of ready made clothing."** During that year there were on record 100 tailors in Boston who made "garments of every description ... mostly for home consumption and slop clothing for navy and merchant ships."***

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* "It is computed in a number of districts that two-thirds, three-fourths and even four-fifths of all the clothing of the inhabitants are made by themselves" (Alexander Hamilton, Report on Manufactures (1791), in his Works, I, 211)

** It is reported that close to $1,500,000 worth of clothing was imported in 1721 (Victor S. Clark, History of Manufactures in the United States, I, 108). Competition to domestic producers must have been severe, and the Freeholders of Boston passed a resolution in 1767 in which they suggest the desirability of lessening imports and encouraging domestic manufacture of "Men and Womens Hatts, Mens and Womens Apparel ready made...Gloves...Muffs, Furrs and Tippets, and all sorts of Millenary Ware...Womens and Childrens Stays" among a long list of other products (Resolution passed on October 28, 1767 and cited in an Almanach published in 1786 (title page missing))

*** An early instance of ready-to-wear production was reported in Northfield, Mass., around 1725 (U.S. Department of Commerce and Labor, Report on Condition of Woman and Child Wage-Earners in the United States, IX, 120)

Although the beginnings of clothing manufacture seem to lie in New England, production of ready-to-wear soon spread to New York, Philadelphia, and elsewhere. It was customary to send work out to be made by home workers. Thus, the Massachusetts "Tables of Industry" for 1837 reported that during that year some 2,500 women were employed in the making of clothes in the city of Boston, but that inasmuch as many of the dealers followed the custom of sending garments out to be made up on farms and in country villages, the total number of employees was much greater.**** By 1844 the situation was such that "every country village within 100 miles of New York became as busy as a beehive with tailors and tailoresses."[*] When German immigrants came over in the forties, they introduced "the family work shop" as well as the first division of labor. "The German tailor took coats, vests, and pants to his home and was there assisted by his wife and daughters, the work being roughly divided into machine sewing, basting, and finishing. The family home shop in the clothing trade appearing among the Germans at that time is peculiar to the German people," says one student of the problem.[**] Although most of such production consisted of men's apparel, a certain amount of women's wear was produced as well.[***]

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* Chauncey M. Depew, editor, 1795-1895: One Hundred Years of American Commerce, II, 561ff.

** U.S. Treasury Department, Documents Relative to the Manufactures in the United States, Collected and Transmitted to the House of Representatives, in Compliance with a Resolution of Jan. 19, 1832, I, 464.

*** Ibid., I, 463f.

**** Massachusetts, Tables of Industry, 1837, p. 28.

The invention of the sewing machine and its subsequent improvements opened the way to production on a larger scale. The Civil War, a few years later, provided an additional stimulus by causing a large demand for military uniforms; while many were imported from abroad, the native industry throve under a large volume of orders. Although originally uniforms were made in the homes of the workers, as the demand increased numerous factories were established.[****] The manufacture of ladies' cloaks and mantillas on a larger scale started at about the same time.* By 1858, factories making mantillas, corsets, and other women's clothing were reported in Philadelphia, though men's clothing manufacture continued to predominate in that city.** In New York a factory making plain underwear for ladies and children, lingerie, and infants' robes was doing business in 1868.*** Around that time a large hoop skirt factory, which converted "steel rods into finished skirts" was established on West Twentieth Street in New York.**** Several years later, a number of dressmaking establishments came into being.***** A Congressional report submitted in January, 1893, describes the industrial trend in the following words:

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[*] Workingman's Advocate, July 13, 1844.

[**] Mabel Hurd Willett, The Employment of Women in the Clothing Trade, p. 33.

[***] For example the Impartial Humane Society of Baltimore produced in 1830, through home workers, in addition to men's apparel, such items as children's suits, cloaks, and mittens, women's and children's aprons, women's plain dresses and bonnets (Mathew Carey, Appeal to the Wealthy of the Land, 3rd ed., p. 18).

[****] Depew, II, 562f.

> Twenty-five years ago it [the production of clothing] was so exclusively custom and family made that probably less than 25% was "ready made"; that is, manufactured in advance of individual demand. By 1880 the proportion of so-called "ready-made" clothing had increased to probably 40% of all men's wear used in the country, and by 1890 this proportion (which has since increased) had risen to above 60%; while the "ready-made" system had involved a large and increasing proportion of women's wear -- leaving, at present, of the great variety of under and outside clothing, of both sexes and all ages, only outside dresses of women still in general specially made for the individual******

Although, as pointed out above, the immediate effect of the introduction of the sewing machine was to lead to the establishment of factories, this trend was temporarily arrested by competition from industrial homework which provided a cheaper method of production.[*] Garments were farmed out to contractors, some of whom produced them in their factories while others gave them out to the "sweaters".[*] Two types of industrial home work were represented in the "sweating" system of the '90s. Writes W.F. Willoughby:

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* "The manufacture of cloaks and mantillas, as a wholesale business, dates its introduction into this country within the last ten years." (E.T. Freedley, Philadelphia and its Manufactures, 1859, p. 225).

** Freedley, p. 223.

*** The Revolution, March 12, 1868.

**** Louis Levine, The Women's Garment Workers, p. 6.

***** The Revolution, February 9, 1871.

****** U.S. House of Representatives (52nd Cong., 2nd sess.), Report of the Committee on Manufactures on the Sweating System, January 20, 1893, pp. iv f.

> It should be noticed that there are two distinct kinds of "sweating", that of the sweat shop proper, where the sweater lives in a room and has a number of men and women, working under his direct oversight and that of the home worker, where the head of the family takes work from a sweater, which he carries home to be completed by himself and family[**]

The tenement work shop in a sense represented a stage of industrial expansion of the home worker's enterprise. In addition to the members of his family, the growing "business" employed additional hands. The widespread practice of working in the tenements is illustrated by the testimony of an outdoor visiting physician for the New York Infirmary for Women and Children whose district extended from

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[*] Numerous manufacturers abandoned their factories and began sending the work out. One manufacturer testified in 1892 that until recently he had manufactured on his own premises, but that he now gave work outside, in New York City, Staten Island, and even as far away as Maine (Report of the Committee on Manufactures on the Sweating System, pp. 13f); a Boston manufacturer testified that twenty years previously "almost every well-regulated clothing house had a factory of its own at the shop building," and that "almost none" now exist, except that "some large retailers, notably Mucullar, Parker & Co., still pursue the plan of manufacturing their own garments within their own premises" (Ibid., p. 30); Abraham Bisno testified that Chicago ladies' cloak firms, Beifeld & Co., and Leigh Brothers, discontinued manufacturing in inside factories and gave work to the "sweaters" (Ibid., pp. 93f.).

[**] W.F. Willoughby, "The Sweating system in the United States", in Herbert B. Adams, Editor, Monographs on American Social Economics, p. 4.

Twenty-third Street to Chatham Square on the East side. Between December 1, 1891 and August 1, 1892, Dr. Daniel visited 153 homes, and in 77 cases she found manufacturing of some sort of article in progress. Most of the work was on clothing. The largest number of persons were engaged in tailoring, usually as "finishers". The second largest group consisted of seamstresses who made boys' shirt waists, undergarments for men and women, babies' white muslin dresses, embroidery, buttonholes, men's neckties, and artificial flowers. In this work women were assisted by their children.*

It would appear that the utilization of sweatshop labor as a means of producing ready-made garments reached its peak around 1892.** From that time on a decline in the amount of industrial home work in the apparel field definitely becomes apparent. Particularly noticeable in the first decade was the decline of the tenement work shop aspect of industrial home work. It was natural that this be the case. With increased production of apparel, better methods of subdividing work were discovered. Invention of special machines, such as the button-hole machine, played a role in this connection. Furthermore, the increased utilization of electric power for the running of sewing machines made it more advantageous to bring the work back into the factories.[*] This natural trend toward the factory method of production was accelerated by the anti-sweatshop agitation which deeply stirred the public mind and which threatened to brand all ready-made garments as vermin-infested and disease-carrying.[**] Beginning with 1892, a number of states passed legislation designed to control and regulate the tenement work-shops.[***] The rising labor movement in the needle trades played its role in the elimination of the home work by providing in its agreements with the employers for the outlawing of homework.*

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* Report of the Committee on Manufactures on the Sweating System, pp. 194f. Dr. Daniel reported the case of one home where the mother was engaged in manufacturing babies' lawn dresses. "The mother makes the buttonholes and does the fine work. The girl of 12 runs the sewing machine, stitching the seams, and tucking. The girl of 8 years cuts the embroidery, does some basting, and sews the buttons ... I asked the mother what the child of 6 years did -- at the time he was ill with the measles. 'Oh, you know he's a half idiot, and can do nothing.' Evidently, the fact that he was too young to work never occurred to her." (Ibid., p. 196)

** The Committee investigating sweating noted that some 50 per cent of all clothing manufactured originated in tenements: 25 per cent in the tenement work shops, and another 25 per cent among tenement home workers (Report of the Committee on Manufacture on the Sweating System, pp. v, vii)

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[*] The transition to a factory basis was facilitated by the fact that at first many of the practices of homework were transferred to the factory along with the homeworkers. Workers were for some time required to supply their own machines and machine stands, to provide their own needles, oil and thread, and to pay a charge for the electricity used, for the seats they sat on in the factory, etc. (Cf. Levine, p. 173f; Willett, p. 46)

[**] Among the various public groups which agitated against the sweat-shop system may be listed the National Consumers' League, organized in 1899, which enlisted in this crusade the efforts of such organizations as the Women's Christian Temperance Union and the National Council of Jewish Women. (Cf. National Consumers' League, Report of the First Quarter Century of the National Consumers' League, 1899-1924)

[***] Cf. U.S. Census Office, Twelfth Census, IX-3, 298f.; U.S. Children's Bureau, Publication No. 234: Industrial Home Work under the National Recovery Administration, p. 3; John R. Commons and John B. Andrews, Principles of Labor Legislation (4th edition), pp. 205f. A law controlling tenement work in cigar making was passed in New York at an earlier date, but was declared unconstitutional.

The trend away from home work was sufficiently noticeable by the beginning of the twentieth century for the Industrial Commission to conclude in 1902:

> Originally the sweating system was a system of working at home, whither the tailor with his family and a few helpers carried the goods which they were to prepare for the merchant. The home work or tenement house work of former years has largely disappeared, especially for the manufacture of ready-made garments, owing particularly to legislation directed against it in the years

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* Organized labor showed an early interest in the question of industrial home work. In 1892 the Chicago Trades and Labor Assembly even employed a special investigator to investigate the sweating system (Report of the Committee on Manufactures on the Sweating System, p. 71). In 1893 the Operators' and Cloak Makers' Union No. 1 of New York City, then affiliated with the United Garment Workers, listed among its demands: "Home work and night work should be abolished", and "All garments should be cut by the firms and made up by their contractors and not by 'second-hand' manufacturers" (Levine, p. 80). The United Cloth Hat and Cap Makers, after a thirteen weeks' strike in 1904-5, secured a collective agreement one of whose provisions outlawed the tenement sweatshop and home work (J.M. Budish and G. Soule, The New Unionism in the Clothing Industry, pp. 76f.). Between 1900 and 1910 the International Ladies' Garment Workers' Union actively fought against homework and sweatshops; by 1910 its attorney estimated that 75 per cent of the New York cloak manufacturers were covered by agreements outlawing home work. When the union, after a protracted strike, was negotiating its first collective agreement with cloak manufacturers' association, the demand for the abolition of home work was accepted by the manufacturers without a dissent and without discussion. (Minutes of joint conference between ten delegates of the Joint Board of the Cloak, Suit and Skirt Makers' Unions and ten delegates of the Cloak, Suit and Skirt Manufacturers' Protective Association, July 28, 1910, "The Cloak Makers' Strike", a collection of documents published by the Protective Association, p. 41). In 1912, the American Federation of Labor went on record as favoring the abolition of industrial home work. (American Federation of Labor, Report of Proceedings, 1912, p. 139)

> following the influx of immigrants fifteen years and more ago. At the same time, also, the progress of the industry has demonstrated the greater economy of separate shops, where a larger number can be employed upon the same garment with a more minute division of labor.*

Similarly, another government investigation undertaken in 1911 commented as follows:

> Though the garment trades are backward in their industrial development, their history shows a distinct movement away from the home, through the small shop, to the factory. For many years the ready-made business, except for the cutting of garments, was almost entirely a home industry. With the subcontract system came the sweat shop. But for several years past there has been manifest a distinct tendency away from the subcontract or sweating system toward the factory system. In 1901 Prof. John R. Commons reported that, though 10 years before probably 90 per cent of women's ready-made garments were made by people who worked for contractors, at that time fully 75 per cent of such work had passed into the hands of "manufacturers". The manufacture of overalls, too, which was in the early years one of the most poorly paid of the home trades, has now become practically a factory industry. Men's coats and overcoats are also increasingly a factory product.**

The movement away from home work was also fostered by the increased growth of labor organization among the workers. In the ladies' garment field, the first collective agreement signed in the New York market in 1910 between the union and the cloak manufacturers provided in its fourth article: "No work shall be given to or taken to employes to be performed at their homes."*** By 1913 similar prohibitions were incorporated in similar agreements covering entire branches of the industry in New York City (dresses and waists, white goods, children's dresses, and house dresses) in Boston (cloaks, dresses and waists) and in Philadelphia (cloaks). The practice of eliminating homework by prohibiting it in collective agreements has been continued, and today the overwhelming number of unionized establishments in contractual relationship with the International Ladies' Garment Workers' Union either provide outright for the outlawing of the industrial home work or prohibit it by restricting the work to unionized establishments. (See Appendix for the discussion of industrial home work in the current agreements of the I.L.G.W.U.). Union activity, however, even though reinforced by favorable public opinion and regulatory legislation, was unable to eradicate industrial home work completely in the garment industries.

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* U.S. Industrial Commission, Report, XIX, 741.
** Report on condition of Woman and Child Wage-Earners, IX, 155.
*** The text of this agreement, the so-called Protocol of Peace, may be found in Levine, p. 542f.

Why does industrial home work persist? Not all employers are in contractual relations with labor organizations, and not all branches of the industry are equally well organized. Those who are unorganized or in branches of the industry where the union is relatively weak remain free to distribute homework. Yet, from the employers themselves frequent complaints are heard as to the relative inefficiency of industrial home work as a production method.*

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* Homework employers repeatedly complained to investigators regarding the inefficiency of homework, referring to waste due to spoilage, costly delays, inability to correct mistakes because of lack of personal supervision, etc. (Cf. New York State, Division of Women in Industry and Minimum Wage, Report to the Industrial Commissioner on a Review of the Operation of Homework Order No. 3 and Recommendation for the Continued Regulation of Homework in the Artifical Flower and Feather Industry, p. 5; U.S. Children's Bureau, Publication No. 234: Industrial Homework under the National Recovery Administration, p. 23; its Publication No. 244: Prohibition of Industrial Homework in Selected Industries Under the National Recovery Administration, p. 16f.)

The answer lies of course in the fact that through the utilization of industrial home workers it is possible to secure labor at virtually no wages, labor whose compensation and working hours are beyond any possible governmental surveillance and control. Were it possible to regulate hours and wages in industrial home work, it would have disappeared long ago, and industrial home workers would have found jobs in factories, doing work identical with that now done in their homes.* In this lies the crux of the problem.

Writing in 1895, the New York factory inspector pointed out:

> It must be said, notwithstanding the improvement noted, that the sweat shop evil has not been eradicated. Only the surface conditions have been bettered. The long hours, small wages, with a constant tendency to lengthen the former and reduce the latter, still continue, and will always be a part of the clothing industry in this country while the law permits the contractors to farm out the clothing to families and pit one family against another.**

The homeworkers themselves are completely incapable of bringing about any improvement in their conditions and this strengthens the attraction of the homework system for some employers. For, as stated in a report issued by the Department of Commerce and Labor in 1911:

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* Some employers attempt to distinguish between the processes performed by homeworkers and those done in the factory, claiming that home work is confined to hand operations. As the many homework investigations show, both hand and machine work may be found in homes. Similarly, large numbers of hand workers are employed in factories. For example, in the New York Metropolitan area out of a total of 85,000 factory workers employed in the dress industry, 10,400 are finishers, 2,000 are examiners, and 4,700 are cleaners, all of these being hand occupations (Julius Hochman, Industry Planning Through Collective Bargaining, p. 45).

** Quoted in Willoughby, p. 17.

> Shop workers brought into close contact with each other, can unite in a refusal to accept less than a specified minimum, but among homeworkers such common action is difficult and unlikely, owing to their isolation. It is easier to bargain with and handle these scattered workers, all of which adds to the desirability of the home workers from the manufacturer's standpoint.*

Such advantages as these, plus the fact that employers manage to save on factory space and accompanying overhead expense,** still constitute the main reason for the existence of industrial home work. As pointed out by the U.S. Women's Bureau in 1937:

> Earnings for industrial home work not only are low in themselves, but they tend to lower factory wage standards. They oblige the factory employer to cut costs to meet the competition of the low-selling home-work product, and at the same time the home-work manufacturer is seriously exploiting the home. For under the industrial home-work system the manufacturer passes on to the individual home many of his overhead expenses, such as rent, heat, light and other normal work requirements, even machinery -- as, for example, in the sewing processes where the worker furnishes her own sewing machine; in knitting, her own needles. Furthermore, the home worker usually is responsible for getting and returning the work, or has to pay for such delivery from her meager receipts. She is responsible for spoiled work and either has to pay cash for spoiled materials or has to make corrections without pay.

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* Report on Condition of Woman and Child Wage-Earners, II, 303f.

** "rather than pay rent for ... additional room, the factory is spread over innumerable bedrooms and kitchens. It means for the employers an actual saving in rental, in heating, lighting, furnishing, and otherwise so equipping a shop as to meet legal requirements, as well as a saving in shop supervision" (Ibid., II, 302).

> Often she must make an initial cash deposit to cover cost of all material until she is paid for the work. Frequently she must make several samples of a pattern at her own expense before she can begin on paid work. In these ways the manufacturer keeps his costs so low as to give him an unfair competitive advantage, so that he can undersell the man who maintains an establishment and pays the normal overhead costs.*

In the last analysis the basis for the continued existence of industrial home work is low wages.** While, as indicated above, homework employers complain frequently of inefficiency, the cost of the latter is offset by the savings on overhead and wages. As pointed out by a New York State report on the artificial flower industry:

> Homeworkers offer formidable competition to factory workers, not only for employment, but also as to wages and labor standards. Whole families working at home earn less than a flower maker in the shop. At the peak of the season, weekly and hourly earnings of individual homeworkers are from one-half to two-thirds the earnings of the flower makers in the factories. It seems reasonable to conclude that it is largely because of the competition of home-workers that the majority of the women factory workers in the industry are unable to earn wages sufficient for self support even during the busiest week of the season, and that wages of women in this industry compare unfavorably with those of some of the lowest wage industries found in the State.***

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* U.S. Women's Bureau, Bulletin No. 155: Women in the Economy of the United States of America: A summary report, p. 69.

** Many homeworkers have to have their earnings supplemented by home relief. In 1935, one-fourth of Philadelphia homeworkers in the infants' and children's field were from home relief families (U.S. Women's Bureau Bulletin No. 155, p. 70). In Chicago a study showed 24 per cent of home work families dependent on public assistance because of low earnings (Ruth White, "Industrial Homework in Chicago" in Social Service Review, March, 1936, p. 55).

*** New York State Department of Labor, Bulletin No. 199: Homework in the Artificial Flower and Feather Industry in New York State, p. 64.

The employment of homeworkers becomes an especially attractive proposition when wages are regulated by legislation. As one writer aptly pointed out: "Wage rates are not, like sanitary arrangements, hours, and so forth, things easily detected by the watch or nose of an inspector."* Instances were found during the N.R.A. when homeworkers unable to earn the minimum rates in the factory were discharged and urged by their employers to do the same work in their homes.** Similarly, home work is used today to avoid compliance with the standards provided by the Fair Labor Standards Act. One writer, a former inspector of the homework division of the New York State Department of Labor, points out:

> Soon after the Wage and Hour Law became effective ... reports were widespread that manufacturers were withdrawing work from their factories, and had arranged to have the same done in homes. These reports, if true, could mean only one thing. The manufacturers were making drastic efforts to secure competitive advantages through a saving of labor costs. This practice if permitted to continue would unquestionably prove a most effective obstacle to effective enforcement of the Wage and Hour Law.***

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* A.C. Pigou, The Economics of Welfare, 4th ed., p. 534.
** U.S. Children's Bureau, Publication No. 234, p. 42.
*** Ruth Enalda Shallcross, Industrial Homework, p. 178.

In this connection must be noted the difficulties of enforcing the provisions pertaining to overtime compensation or to child labor. Various agencies have frequently referred to the impossibility of securing evidence of child labor law violations in cases of industrial homework because before the door is opened to the inspector there is ample time to hide all signs of work by children.* To discover violations of overtime provisions is well nigh impossible without stationing an inspector in every home where industrial homework is carried on. In fact, resistance to the abolition of homework is based in large part on the fact that its disappearance would close off an avenue whereby the regulation of hours of work may be defied with impunity. As far back as the turn of the century one investigation found that:

> The main objection brought by clothing manufacturers against the prohibition of home work and the contractor's sweat shop is the necessity of working long hours during the busy seasons. The factory system, under the customary factory laws, would restrict employment to 58 or 60 hours a week, whereas when working at home or in sweat shops employment during the busy season can extend to 12 or 14 hours a day and even longer in individual cases since the law does not apply to home workers, and is difficult of enforcement in the sweat shops ... This objection, in view of existing legislation regulating hours in this industry, lacks force.**

Employers of homeworkers, even if they desired to, can not keep accurate records of hours worked unless they supervise each worker individually. Generally, no attempt is made to keep track of hours. That the enforcement problem presents almost insurmountable difficulties is made clear by the New York Department of Labor:

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* See, among others, Connecticut Department of Labor and Factory Inspection, Minimum Wage Division, Homework in the Fabricated Metal Industry of Connecticut, pp. 66f; Pennsylvania Department of Labor and Industry, Bureau of Women and Children, Industrial Homework in Pennsylvania in 1936, p. 7; U.S. Children's Bureau, Publication No. 234, p. 9.

** U.S. Industrial Commission, XIX, 742.

> The large number of homework families, the temporary nature of their work, the constant shifting of residence of families at the poverty level, the difficulty of obtaining true addresses for families on relief rolls, the carelessness and ignorance of some employers, and the economic advantage to them from concealment of the facts, all operate against effective regulation...*

Abuse of workers and violation of the spirit and letter of the law are not new things in industrial home work. Underpayment and mistreatment of homeworkers dates at least from the first half of the nineteenth century.** "The worst features of this state of things", commented the New York Daily Tribune in 1845, "are its hopelessness and its constant tendency from bad to worse. Small as are the earnings of those seamstresses, they constantly tend to diminish."*** In addition to paying next to nothing, it was reported that many employers required their employees to make a deposit equal to the full value of material taken out to be made up, a deposit frequently not returned to the worker when the slack time came.**** In addition to such deductions, earnings were frequently not paid in full. "We have known instances," said the Tribune, "where those professedly fair priced houses have for successive weeks paid but 50 cents on acount, and when work became scarce have postponed settlement day after day, till the patience of the claimant has been exhausted, and she has been compelled to give up her claim."*

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* New York Department of Labor, Bulletin No. 199, p. 68.

** As early as 1828, considerable agitation in which Mathew Carey played a leading role, called public attention to the wretched condition of homeworkers. (Cf. Mathew Carey, "To the Ladies Who Have Undertaken to Establish a House of Industry in New York", and "To the Editor of the New York Daily Sentinel" in his Miscellaneous Pamphlets, Phila., 1831).

***New York Daily Tribune, March 7, 1845.

****Ibid., June 8, 1853.

When as a result of abject conditions in the clothing industries in the nineties, public attention was focused on the sanitary aspects of clothing manufacture in the homes of the workers, a number of states enacted legislation directed against tenement manufacture. By 1904 twelve states, including a number of the most important industrially, had passed laws prohibiting certain types of work in tenements by persons other than members of the family residing therein, requiring permits to give out and receive home work, and setting up standards of sanitation for tenement house work rooms. Several of these laws required the labeling of articles produced in unsanitary surroundings.** However, these statutes seemed to have been more honored in the breach than in the observance, and reports of widespread violation and evasion were heard almost before the ink had dried. Massachusetts manufacturers, required under an 1892 statute to label garments produced in tenements under unsanitay conditions, began increasingly to ship work out to be made up in New York, New Jersey, Maine and other states.*** A Chicago sanitary inspector testified in 1892 to "a great deal of evasion" encountered.* A congressional committee making field visits in Boston found not only sanitary violations but homework performed on premises completely unknown to the local inspectors.** The secretary of the Anti-Tenement House League told the same committee that on the basis of his field visits it was evident that conditions in the tenement workshops were growing worse despite the Massachusetts statute. The manufacturers' compliance with the law, he reported, stopped at lip service. They were using the existence of the law to allay the public's fear of contagion, as much as to say: "Everything is clean now. We have got two inspectors, and you needn't fear now. There is no more danger."*** Similar conditions were found in New York.**** Several other witnesses testified to non-enforcement of the labeling laws, school laws, and laws requiring a minimum number of cubic feet of air per worker.***** No wonder the Committee adopted as its own the position of the several witnesses who advocated the abolition of home work.******

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* Ibid.

** U.S. Children's Bureau Publication No. 234, p. 3; John R. Commons and John B. Andrews, pp. 205f; U.S. Census Office, Twelfth Census, IX-3, 298f.

*** John Crowley, secretary of the Anti-Tenement House League, testified that he found clothing being made in New York tenements for Boston, Philadelphia and Chicago firms (Report of the Committee on Manufactures on the Sweating System, pp. 110f.). Similar testimony was offered in a letter from the chief of the Massachusetts Bureau of Statistics of Labor who wrote that the amount of work sent from Boston to New York was increasing at the expense of Boston contractors (Ibid., pp. 229f.).

Eight years later, another Federal investigation turned up almost identical conditions. Mr. James B. Reynolds, head worker of the University Settlement Society of New York City, testified that the enforcement of the state laws led merely to the "transfer of the evil from one State to the other. That is, you will accomplish what we accomplished about 5 years ago when we pitched into the sweatshops and they simply moved from New York to New Jersey." He also pointed out that "the enterprising Massachusetts garment maker sends to New York and has the goods made up and then brings them back and has the Massachusetts label put on" because Massachusetts goods commanded a premium based on the public's belief that they "are more likely to be made up under sanitary conditions."* A witness from Pennsylvania reported that the Board of Health in that State "cannot enforce its regulations; clean them out one day and they come back the next day."**

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* Testimony of Mary E. Glennon, in ibid., p. 95.
** Ibid., p. 148.
*** Ibid., P. 112.
**** Ibid., p. 199.
***** Ibid., pp. 74, 94, 102, 126, and 225.
****** Ibid., pp. 94, 96, 198 and xxviii.

Further investigation in 1910 revealed that home work still defied regulation. Some manufacturers were brazen enough to describe to Federal investigators the practices they followed in evading the home work laws. Witness the following report of an interview with a clothing manufacturer:

> "Finishing on pants is usually done in the homes of the workers. Practically all pants are finished in homes. Vests are seldom or never finished in homes. We make expensive clothing. The laws have been so adjusted that work can not be done in homes unless licensed. Because of these strict laws, some people have inside shops for this work. If a garment is made in a tenement which is dirty or where there is an infectious disease, it does not hurt the wearer. Pressing with a hot iron will kill any germ. Once in a while we have had garments made in unlicensed homes. The factory inspectors labeled them 'Made under unsanitary conditions,' but we always tore the label off." Here one of his office force got very nervous and made certain motions to the employer, who then added: "That is, we don't tear the label off in New York State; we send

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* U. S. Industrial Commission, XIV, 86
** Ibid., XV, 195

> it over to New Jersey, and it comes back to us minus the labels. It's none of the New York factory inspector's business what is done with garments that go to New Jersey, and so we do not break the law." One wonders if the garments are really sent across on the ferry thus to preserve the dignity of the law.*

There is hardly a report on home work down to the present day which does not tell the same story of evasion and violation of laws regulating home work and the use of home work to evade laws regulating factory labor conditions. It is unnecessary here to trace experience with attempts at regulation in detail; but it is evident from a sampling of the literature that what held true in 1892, 1900, and 1910 applies with equal force to the period since. A Massachusetts study published in 1915 declared that "Licensing has failed in Massachusetts...More than one-half the families visited at work on wearing apparel were not licensed."** A Pennsylvania study revealed that in 1921 only 20 per cent of the home workers reporting had licenses as required by law. Home workers were found who had never heard of the licensing requirement.*** Laws regulating child labor in factories resulted in an increase of child labor on home work and "The very evils which the law attempts to correct, children bear in increased numbers, laboring in the home often under conditions of more evil import than those in the factory."**** Similarly, home work provided a means of evasion of the law regulating the hours of labor for women. Factory workers were given garments to make in their homes at night after regular factory hours.*

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* Report on Condition of Woman and Child Wage Earners, II, 303f.

**Boston Women's Educational and Industrial Union, Department of Research, Industrial Home Work in Massachusetts (Prepared under the joint direction of the Massachusetts Bureau of Statistics and Amy Hewes, Supervisor of Investigation for the Department of Research) p. xiv.

*** Pennsylvania Department of Labor and Industry, Industrial Homework in Pennsylvania (1921), p. 91.

**** Ibid., p. 64.

A nation-wide offensive against the evil of industrial homework took place during the N.R.A. In a number of apparel codes industrial home work was prohibited. The industries which took such a stand did so either because the problem was of such a minor character as to make any discussion of the subject purely academic or because the majority of employers in the industry realized that industrial homework threatened any fair competitive practices that the codes might help to develop. The first three codes to prohibit homework were Coat and Suit, Corset and Brassiere, and Men's Clothing. The coat and suit industry decided to incorporate a provision prohibiting homework into the code solely as a "statement of principle and as an indication that the achievement of former years would be maintained under the code."** Corset and brassiere manufacturers readily agreed that it was important to abolish homework, on sanitary grounds, "since the products of this industry are customarily worn next to the body".*** In the manufacture of men's ready-to-wear, where industrial homework had not been fully eliminated prior to that time, labor and management agreed unanimously during negotiations to abolish homework, but allowed three months as a period of adjustment.* It is of interest to note here that the experience of this industry was that 94 per cent of homeworkers were taken into the factory, thus indicating that "prohibition of homework is not impracticable from the standpoint of either the manufacturer or the homeworker."**

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* Ibid., p. 126

** National Recovery Administration, Division of Review, Work Materials No. 45: N.R.A. and Industrial Homework, p. 24

*** Ibid., p. 25; Code of Fair Competition for the Corset and Brassiere Industry, as Approved on August 14, 1933, article 5. There was little homework at that time in the Corset and Brassiere industry. The factory system was well established in that industry by 1913, and although some homework was done at that time, factories giving it out stated their preference for doing the work in the factories (Connecticut Commission to Investigate the Conditions of Wage-earning Women and Minors, Report, 1913, p. 94). An investigation of children doing industrial homework in New Jersey, made in 1925 revealed that out of 1131 cases of homework, only 24 involved work on brassieres and corsets (U.S. Children's Bureau, Publication No. 185: Child Labor in New Jersey, II, 19).

In all there were 118 industries which incorporated provisions with regard to homework in their N.R.A. Codes of Fair Competition.*** Of the 22 industries manufacturing various items of

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* "In the manufacture of men's ready-made clothing...it was not until some years after the organization of the Amalgamated Clothing Workers in 1914 that any real progress was made in the elimination of homework through union agreement. In Chicago and Cleveland, decisions rendered by arbitration boards in 1920 provided for the abolition of homework. In Rochester, although the agreement between the Amalgamated Clothing Workers and the Clothier's Exchange, first signed in 1920 and renewed periodically thereafter, provided that homework was to be abolished, the provision was never fully enforced until the period of the National Recovery Administration." (Frieda Miller, Industrial Home Work in the United States, in International Labour Review, January, 1941, p. 27). Cf. also NRA Division of Review, Work Materials #45, p. 24.

** U.S. Children's Bureau, Publication No. 244: Prohibition of Industrial Home Work in Selected Industries under the National Recovery Administration, p. 26.

*** Homework provisions were found in the codes for the bulk of the industries in which the problem existed. Of the total, 17 provided for the regulation of homework by limiting the number of homeworkers, by restricting the practice to specific branches of the industry, or by establishing regulations aimed at providing for homeworkers earnings equal to those of factory employees. The 101 codes which contained homework prohibitions included 72 codes which prohibited the practice after the effective date of the code, 19 which allowed a period of adjustment, ranging in most cases from 1 to 6 months for the transfer of homework to the factory, and 10 codes which incorporated the terms of the Executive order of May 15, 1934, which exempted from homework prohibitions those homeworkers who were physically handicapped and those "unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or

(ctd. on next page)

apparel for women, twenty-one codes had some provision regarding homework. The one exception was the code for the Covered Button industry where the absence of a homework provision is accounted for by the fact that there is no homework problem of any significance in that industry. Of the 21 codes with homework provisions, 17 provided for complete abolition of homework -- twelve on the effective date of the code,* and five at a specified future date.** The remaining four

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(ctd) an invalid" (N.R.A. Division of Review, Work Materials No. 45, p. 116; Executive Order No. 6711-A, prescribing rules and Regulations for the Interpretation and Application of Certain Labor Provisions of Codes of Fair Competition as They May Affect Certain Homeworkers). It may be noted that the abolition of industrial homework under the codes was in major part the work of the employers. In practice labor provisions of the codes "were initiated by the management groups except in a few industries in which labor was strongly organized." (U.S. Committee of Industrial Analysis, National Recovery Administration [House Doc. No. 158, 75th Cong., 1st sess.] p. 14.) In only 11 industries out of 557 covered by basic codes is there definite evidence of joint preliminary negotiations and determination of provisions by employers and employees (Ibid., p. 83).

* They were: Academic costume; blouse and skirt; celluloid button, buckle and novelty manufacturing; coat and suit; corset and brassiere; dress manufacturing; rainwear division of rubber manufacturing industry; robe and allied products; shoulder pad manufacturing; undergarment and negligee; underwear and allied products; and women's belt.

** They were: Artificial flower; men's garter, suspender and belt manufacturing; pleating and stitching; and schiffli, the hand machine embroidery, and the embroidery thread and scallop cutting; and knitted outerwear. The latter code provided for the abolition of hand knitting, hand crocheting, hand embroidering, and hand sewing of machine made parts of garments one year after the effective date of the code; in the meantime the workers were to be compensated in accordance with piece rates to be established. (Code of Fair Competition for the Knitted Outerwear Industry, as approved on December 18, 1933, Article VI.) However, two stays of this provision were issued, one postponing the effective date to April 1, 1935 (Administrative Order No. 164-36, dated February 4, 1935), the other to May 15, 1935 (Administrative Order No. 164-41, dated February 27, 1935).

codes either prohibited all but specified types of home work or limited the proportion of homeworkers permitted.*

All of the codes applicable to the manufacture of items of women's apparel where homework was a significant factor recognized industrial homework as an evil about which something had to be done. Practically all of them either provided for outright abolition of homework or contemplated its eventual abolition. This held true for those industries where homework was so widely prevalent as to require drastic readjustments as well as for those where the transition to a factory basis had to be made by only a small segment of the industry.* Why then, it may be asked, were the employers anxious to incorporate such provisions into the codes for their industries? The answer lies in their recognition of the fact that it was futile to attempt to control wages and hours in industrial homework through regulations. This was frequently stated explicitly.*

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* They were: Cotton garment; infants' and children's wear; handkerchiefs; and women's neckwear and scarfs. The Cotton garment code provided for the prohibition of all machine sewing in the homes within three months from the effective date of the code, and made an exemption for "what is known in the trade as turning collars which have a laundry wash in the factory before shipping" (sic), whenever an application was made to the Code Authority, and also permitted "homework on hand embroidery, which is incidental to the manufacture of cotton garments" (Code of Fair Competition for the Cotton Garment Industry as approved on November 17, 1933, article VII). The Infants' and Children's Wear Code prohibited all homework on sewing machines (Code of Fair Competition for the Infants' and Children's Wear Industry as approved on March 27, 1934, article V, section 8). The Code for the handkerchief industry at first prohibited homework except on handkerchiefs made entirely by hand and those wholesaling at $3.50 or more a dozen, and on which the labor cost of the hand operation equalled 60 per cent or more of the total labor cost. (Code of Fair Competition for the Handkerchief Industry as approved on October 9, 1933, art. IV, sec. 8 and 9). A later amendment restricted industrial homework to handkerchiefs made entirely by hand but permitted such other homework as was performed by handicapped persons under the terms of the Executive order of May 15, 1934 (Amendment No. 2 to the Code of Fair Competition for the Handkerchief Industry as approved October 31, 1934); but the application of this amendment was stayed insofar as it applied to hand sewing and embellishment (Order Approving Amendment of Code of Fair Competition for the Handkerchief Industry, October 31, 1934). The Code for the Women's Neckwear and Scarf Manufacturing industry permitted homework in accordance with the Executive Order of May 15, 1934, but in addition permitted an employer to give out homework provided "at least one half of the total number of articles of each type are produced in a factory maintained by, or operated for" him (Code of Fair Competition for the Women's Neckwear and Scarf Manufacturing Industry, as approved on December 19, 1934, art. III, sec. 4).

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* Thus homework was prohibited in the artificial flower industry, despite the fact it had "always been a considerable factor" and was in fact regarded as "an integral part of the productive system" of the industry (Report of the Deputy Administrator on the Code of Fair Competition for the Artificial Flower and Feather Industry, appended to Approved Code No. 29 for the Artificial Flower and Feather Industry). In the garter, suspender and belt industry the number of homeworkers was estimated at about 700 to 1,000 as against somewhat less than 5,000 employed in the factories (Report of Hugh S. Johnson, Administrator of the N.R.A. to the President, dated November 2, 1933, and appended to Approved Code No. 94 for the Men's Garter, Suspender and Belt Manufacturing Industry); yet homework was abolished by the code for this industry. Similarly homework was abolished in the pleating, stitching and bonnaz and hand embroidery industry, though there were "more workers employed by this industry in their homes than in factories" and with full recognition of the fact that "great difficulties in readjustment ... will be faced by every member of the industry". (Letter of transmittal, dated February 10, 1934, signed by Hugh S. Johnson, Administrator of the NRA and appended to Approved Code No. 276 for the Pleating, Stitching and Bonnaz and Hand Embroidery Industry). Similarly, the code for the Schiffli, the Hand Machine Embroidery, and the Embroidery Thread and Scallop Cutting industries abolished homework though it "presented a significant amount of the total production activities of the industry" (Report of Hugh S. Johnson, Administrator of the N.R.A., to the President, dated February 2, 1934, and appended to Approved Code No. 256 for the Schiffli, the Hand Machine Embroidery, and the Embroidery Thread and Scallop Cutting Industry).

Experience under the N.R.A. drove home the point that while abolition of the homework system can be carried through successfully, even the best administered attempts to control its evils through regulation are doomed to fail. Hours far in excess - in some cases more than double - the maximum number permitted by the codes, wages a fraction of the code minimums, and the persistence of child labor were found in every investigation of the effectiveness of regulation in those industries where it was attempted.** Regulation proved a complete failure even in the cases of those workers who were issued certificates under the terms of the Executive Order of May 15, 1934.* In such cases, certificates were subject to the most stringent controls applied under the N.R.A. The Bureau of Women and Children of the Pennsylvania Department of Labor made an exhaustive study of the conditions under which such certificated workers labored. It found that 79.3 per cent of the certificates had been violated. In the infants' and children's wear industry, the certificates violated amounted to 91.7 per cent of the number issued. Violations were found as to hours, wages and child labor.** The study was made in an effort to determine whether the system of certification had accomplished its purpose - to set up standards in the home which would approximate the factory standards established by the Codes of Fair Competition. This was the Bureau's conclusion:

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* In connection with the garter, suspender and belt code, the Administrator pointed out: "The elimination of home work is believed to be the first step in the effective enforcement of the labor provisions of the code" (Report of Hugh S. Johnson, appended to approved Code No. 94, supra.). In connection with the pleating and stitching code the Administrator declared: "There can be no question that home work as carried on in the embroidery industry is a source of disaster in any attempts at organizing a stable industry. Evidence was offered at the public hearings and in the conferences to show that hand workers were paid as little as 5¢ an hour and that the highest rate paid for homework by even reputable manufacturers was 12¢ an hour, and these rates were for embroidery requiring years of training and the utmost skill and artistry. On work requiring less degree of skill or in preparation of work of high skill, when work is taken to the homes, the children of the household are employed in most of their spare hours. The impossibility of any cost accounting control and price cutting prevention under such conditions is self-evident. The abolishment of home work was therefore decided by an overwhelming majority in the industry, notwithstanding great difficulties in readjustment that will be faced by every member of the industry." (Letter of Transmittal, appended to Approved Code No. 276, supra.) Regarding the prohibition of homework in the schiffli embroidery industry, the Administrator stated: "This procedure seems essential in order to guarantee that the minimum wage and maximum hours provisions will be controlled and regulated." (Report of Hugh S. Johnson, appended to Approved Code No. 256, supra.)

** Reports of some of those investigations may be found in the following documents: NRA Division of Review, Work Materials No. 45, which reviews the general experience and on pages 200f. presents the results of an investigation of homework in the knitted outerwear industry; Pennsylvania Department of Labor and Industry, Bureau of Women and Children, Industrial Homework in Pennsylvania under the N.R.A.; U.S. Children's Bureau Publication No. 234, which analyzes the experience of the knitted outerwear industry, and infants' and children's wear industry, among several others; U.S. Children's Bureau Publication No. 244, which analyzes experience in the men's neckwear, men's clothing and artificial flower industry, among others.

> Homework can never be regulated...No mater how stringent the regulations, how great the enforcement, how honest the investigators, the sweatshop conditions will continue to exist unless homework is abolished. The conditions which exist are an integral part of industrial home work and only when processing of articles in employees' homes is abolished can the conditions growing out of this system of production disappear.***

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* "The classes of homeworkers exempted by the Executive Order definitely represented only a small percentage of the total number of homeworkers. The homeworker system could not be expected to survive if so few homeworkers were permitted. By and large, the motives which had perpetuated the homework system as a phase of industrial production were not humanitarian. With all the economic advantages gone, it was not likely that a large number of manufacturers would continue sending work out to be done in homes simply because a few crippled, invalid, and aged persons needed the work to get along". (NRA Board of Review, Work Materials No. 45, p. 33)

** Pennsylvania Department of Labor and Industry, Bureau of Women and Children, Pennsylvania's Experience with Certificated Homeworkers, p. 5.

*** Ibid., p. 8.

The findings of the U.S. Children's Bureau did not differ from those of the Pennsylvania agency; as to the failure of N.R.A. attempts at regulation:

> Under the National Recovery Administration great gains were made where the codes prohibited the giving out of homework. But in the industries in which homework was still permitted, even though limited by certain regulations, the ancient evils continued to exist and to constitute a menace to the higher labor standards that had been achieved for factory workers.*

N.R.A. regulation of homework marked a significant step forward in the handling of the homework problem in that the emphasis was shifted from protection of the consumer against the danger of contagion to protection of the homeworkers from the detrimental effects of low wages, long hours and child labor. In this respect, experience under the N.R.A. foreshadowed the problems which were later to be faced by the Wage and Hour Administration when it attempted to eliminate child labor from homework and to enforce minimum wages and maximum hours for homeworkers. The Women's Bureau summarized the difficulties involved in this type of regulation in a study of homework in Rhode Island under the N.R.A.:

> The practice of having work done in the homes instead of in the factory always has been opposed by the Women's Bureau. Its main objection is based on the fact that effective regulation of homework is impossible. For example, the regulation of hours of work that has been satisfactorily enforced for factory workers in many states obviously is out of the question so far as homeworkers are concerned. Paid by the piece, homeworkers are tempted to put in longer hours of work than would be permitted in the factory, and they often work far into the night, a custom that has been abolished in many states in the case of factory work. Frequently, too, long hours of night work are made necessary because of the quantity of work sent out by the factory, often late in the day, to be finished and returned the

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* U.S. Children's Bureau, Publication No. 234, p. 21.

> next morning.
>
> The regulation of wages is equally impracticable. Even though rates for home work were the same as for similar work done in the mill, which is rarely the case, many things contribute to make the actual earnings of home workers much less than those of factory workers. Often more is required of the home worker than of the worker in the mill, for example, folding or other preparation for distribution, usually not done by the production employees in the factory. More often, work done in the homes is not carried on in the factory, so that the wage rates are not fixed by any standard that the mill might have for its inside workers. The home workers themselves are at a disadvantage through lack of organization, if not lack of communication. Because of this they have difficulty in knowing just what wages they may rightly expect and in making any effective demand for a change.
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> The prevention of child labor also is practically impossible under a system of industrial home work. It is a temptation in families that eke out their existence by home work to increase their pitifully small earnings with the aid of even very small children.*

The success of those industries which attacked the homework problem by providing for outright abolition stands in sharp contrast to the experience of those whose codes did not go beyond regulation. There is general agreement that the code prohibitions of homework resulted in a substantial decrease in the total volume of such work. Pennsylvania, for example, reported:

> The number of homeworkers reported by Pennsylvania employers decreased from 8,649 to 5,531 between September, 1933, and September, 1934, a drop of more than one-third. This decrease resulted mainly from the prohibition of homework by many NRA codes.**

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* U.S. Women's Bureau, Bulletin No. 131; Industrial Homework in Rhode Island, p. 1.

** Pennsylvania Department of Labor and Industry, Bureau of Women and Children, Industrial Homework in Pennsylvania Under the NRA, p. 3. The Bureau points out that this decrease in the volume of homework was the net result of widely varying code provisions, homework in some industries where the codes permitted it having increased (Ibid., pp. 5f.). Cf. also for trend in the number of homeworkers' licenses issued in New Jersey during the N.R.A. period, U.S. Bureau of Labor Statistics, Bulletin No. 629, p. 178; and for Rhode Island's experience with the N.R.A. prohibition of homework in the jewelry industry, Bureau of Labor Statistics, Bulletin No. 619, p. 47.

Federal agencies had a similar tale to tell. The Children's Bureau stated that:

> Investigators of the United States Department of Labor ... reported that they experienced considerable difficulty in locating persons actually engaged in homework in sections where in past years they had only to walk along certain streets to see entire families absorbed in work that was later abolished under the codes.*

With a view to determining the effect of NRA homework prohibitions the Children's Bureau made an investigation covering the men's clothing, men's neckwear, artificial flower and feather, medium and low priced jewelry manufacturing and tag industries, all of whose codes had provided for the abolition of homework. Out of the 117 employers investigated, the Bureau turned up only three who continued to distribute homework in violation of code prohibitions. At least a part of their former homeworkers had been brought into the factory by 93 of these employers. Three others had brought the work inside without increasing the number of their factory workers; and four had turned over the work formerly done by homeworkers to contractors who, in turn, had established themselves in shops and brought their homeworkers inside.**

The experience of these employers showed conclusively that "prohibition of homework is not impracticable form the standpoint of either the manufacturer or the homeworker."*** The manufacturers investigated reported, in general, that the difficulties of complying with the code prohibitions had not been so great as they had anticipated; that the expected labor shortages had not materialized; that homeworkers adjusted to factory routine with comparatively little difficulty; and that the work formerly done in the homes was performed much more efficiently in the factory at considerably higher rates of pay.*

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* U.S. Children's Bureau, Publication No. 234, p. 23.
** U.S. Children's Bureau, Publication No. 244, p. 11.
*** Ibid., p. 26.

A committee appointed by the President to prepare for him "an adequate and final review of the effects of the administration of Title I of the National Industrial Recovery Act" summed up the N.R.A. experience with homework in the following language:

> NRA came to believe in the abolition of industrial homework, both because of its disastrous social and competitive effects and because of the difficulties it created in the way of establishing effective control and regulation of the terms and conditions of employment. ... The net result of the prohibition of home work was a marked decrease in the volume of home work in most industries, even in those in which the prohibition was not completely observed. The difficulties of enforcement were at a minimum in well-administered codes which made constant investigations and audits of employers' records. The Women's Bureau reported that employers felt that if all codes alike prohibited home work, so that no employer had the advantage over another, the abolition of homework could be satisfactorily effected. Nineteen industries that did not prohibit industrial home work provided for some type of control of it. It was found among the industries which merely required the establishment of registers of industrial home workers that this method did not provide an adequate means of controlling home work. Nor did the establishment of minimum piece rates provide a successful method of control. ... On the whole it was found that regulation of home work definitely decreased the number of home workers, transferred an increasing number of such workers back to the factory, and improved conditions among homeworkers considerably. Sometimes actual earnings rose almost 100 per cent. Nevertheless, home workers did not come to enjoy code wage standards, even in industries where the regulations were severe and enforcement was exacting. The evils of industrial homework continued under a regulated system in mitigated form. The provisions failed most conspicuously in regulating hours of employment and child labor. It was found that only complete prohibition could eradicate the evils of industrial home work.**

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* Ibid., p. 26f.
** U.S. Committee of Industrial Analysis, p. 116f.

As soon as the N.R.A. was declared unconstitutional, thus ending the code prohibitions, homework volume turned sharply upward.* In order to escape State regulatory measures, where they existed, employers increasingly resorted to the device of shipping homework across State lines, thus conquering new territories for the sweatshop. The growth of this practice led the Division of Labor Standards to proclaim:

> In view of the growing conclusion that homework as a method of industrial production must go, this tendency to perpetuate itself by reaching out into remote communities is especially significant. Already the interstate shipment of homework goods as a practical possibility has been demonstrated; and as the large homework States continue their fight toward abolition, the threat to the States in which it is not yet a problem is apparent.**

A study made in 1936 demonstrated that 194 manufacturers located in New York were escaping the strict regulations of that State by sending out work to be performed by 1,661 homeworkers in 16 states and Puerto Rico. Several of these states had no homework regulations of any type.***

Further impetus to homework was provided when the Fair Labor Standards Act was made law. Although this statute fixes minimum wages and working hours for home as well as factory employees, the difficulty of controlling standards of homeworkers was immediately recognized by certain employers. Less than three months after the effective date of the law, the Administrator of the Wage and Hour Division was forced to remark:

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* An examination of data for the states requiring registration of homeworkers bears this out very clearly (Cf. U.S. Bureau of Labor Statistics, Bulletin No. 629: Labor Laws and their Administration, 1936, p. 178; Pennsylvania Department of Labor and Industry, Bureau of Women and Children, Industrial Homework in Pennsylvania under the NRA, p. 23; its Industrial Homework in Pennsylvania in 1936, pp. 3 and 8; New York Department of Labor, Annual Report of the Industrial Commissioner for the Twelve Months Ended December 31, 1936, p. 66).

** U.S. Division of Labor Standards, Interstate Shipment of Industrial Homework, November 5, 1936, pp. 5f.

*** U.S. Bureau of Labor Statistics, Bulletin No. 629, p. 171.

> Reports have already come in to the Wage and Hour Division which indicate that in a number of industries in which homework is possible and has been practiced in the past, the passage of the Fair Labor Standards Act has led to an increased use of this method of manufacture.[*]

He went on to point out that:

> All homework is, of course, done on a piece work basis - so much for a certain lot of goods - and where a minimum wage exists there is little doubt that the very existence of homework is a prima facie case that the statute is being evaded. All evidence on the subject points to the fact that work in the home is less effective and less efficient than the same work performed in a factory; and, therefore, that no employer who is required to pay 25 cents or 30 cents an hour can afford to have this work done in the home because it could be done at less cost in his own plant.[**]

Confirmation of these fears was not long in appearing. Homework continued to flourish, with wages barely different from those paid in the 1890's.[***] Wages of 5 and 10 cents an hour were common. Wrote one homeworker to one of the I.L.G.W.U. locals in November, 1938: "I earn from 12¢ to 14¢ per hour, at the most. Some women at his concern make maybe a little more, but the majority earn even less than I do.[****] A knitgoods manufacturer not in contractual relations with the International Ladies' Garment Workers' Union wrote to the manager of its Local 155:

> I read in the "Women's Wear" today about your complaint to the wage and hour administrator about women working on home work for as low as seven cents per hour. I want to bring to your attention the fact that you are wrong about this statement, because

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[*] U.S. Wage and Hour Division, Interim Report of the Administrator of the Wage and Hour Division for the Period August 15 to December 31, 1938, part IV, p. 3f.

[**] Ibid., part IV, p. 5.

[***] Report of the Committee on Manufactures on the Sweating System, pp. viii f.

[****] Letter from the files of the Knitgoods Workers' Union Local 155 of the I.L.G.W.U.

> I know women in Brooklyn and also around Jersey doing embroidery homework for tyrolean sweaters for as low as three cents a piece, and all they can make is two sweaters an hour... I admit that in the twenty years I have been in business, I have never seen such conditions existing before.*

Statements made by homeworkers in 1941 to representatives of the I.L.G.W.U. showed hourly earnings ranging from 15 to 31 cents. The workers reporting these earnings were performing homework on blouses, neckwear, dresses, housecoats, negligees, shorts and skirts. Except for the last item mentioned, where a 40-cent minimum applies, all of these garments call for a 35-cent minimum wage under the terms of wage orders issued by the Administrator of the Wage and Hour Division. Extra compensation for overtime was conspicuous by its absence, according to these statements. Homework handbooks were generally not used. In the few instances where they were used, either they were kept in the employer's possession rather than given to the homeworkers as required, or the hours recorded in the handbooks bore no relation to the actual hours worked. Several of the statements pointed out that the employers made no inquiries as to hours worked.**

Of the innumerable attempts to evade the provisions of the Fair Labor Standards Act, one is particularly noteworthy. Several knitgoods manufacturers organized the Hand Knitcraft Institute and established a "purchase and sales arrangement" whereby home workers "bought" the knitting yarn from them and then "sold" the finished article. The Wage and Hour Division initiated an action against these firms, which was settled by a consent decree in cases of 11 firms.*** Underpayments were estimated at close to $250,000. The amount of underpayments had to be estimated, there being no way in which exact figures could be secured. It is interesting to note in this connection that subsequently the counsel who represented the Hand Knitcraft Institute sent a memorandum to manufacturers in which he drew attention to hand knitting and crocheting organizations in Maine and New Hampshire, and said: "These cooperatives and others that may follow their example give promise of taking over the hand knitting and hand crocheting industry of the country not only in infants wear but in adult wear."* The Maine "cooperative" receives its orders from New York. According to its sponsor, "the fastest worker" can turn out weekly four crocheted four-piece baby sets - cap, saque, and bootees. The average worker makes about three sets a week. For this work they are paid at $15 per dozen, or on the average $3.75 a week.** Obviously such weekly earnings are incompatible with the provisions of the Fair Labor Standards Act.

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* Letter from Hirsam Knit Sportswear, Garnerville, N.Y., dated November 17, 1938, from the files of Local 155.
** Statements on file with the Research Department, I.L.G.W.U.
*** Harold D. Jacobs v. Hand Knitcraft Institute, et. al., 2 Labor Cases, 144.

In brief, the net effect of the Fair Labor Standards Act on many employers was to increase their attachment to the homework method of production because it so greatly facilitated evasion of the hours and wages provisions of the law.* In this respect, experience under the Act to date supports the conclusions based on experience with previous attempts to regulate homework - namely, that violation and evasion of the law is an inherent characteristic of homework which no system of regulation can eradicate. This fact is increasingly recognized in State legislation. When, in 1936, the International Association of Governmental Labor officials approved a "model bill" providing for more stringent regulation by the states, they incorporated into the draft a grant of broad powers to the State authorities to abolish homework, industry by industry.** At the present time, a number of states, including those where homework is most important, have laws looking toward the aboliton of homework.* Several states have issued orders prohibiting homework in specific industries. In the State of New York, three such orders have been issued to date: for the men's and boys' outer clothing, men's and boys' neckwear, and artificial flower and feather industries.** Connecticut has abolished virtually all homework within its borders.*** Oregon, under its general authority to regulate the conditions of employment of women and minors, has issued an order prohibiting homework in the needlecraft occupations.****

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* Harold R. Lhowe, Memorandum Re Hand Knitting and Crocheting in Maine, January 21, 1941.

** John F. Coggswell, "North Woods Miracle" in The American Magazine, October, 1940, p. 22. This "coop" also makes men's sweaters, knitted sport costumes, bootees and moccasins, woolen mittens and gloves (Ibid.).

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* An analysis of compliance with the Fair Labor Standards Act in the jewelry industry made by the Wage and Hour Division revealed that the following practices were resorted to by homework employers to evade the provisions of the Act: "1. A substantial failure to obtain record-keeping handbooks deemed by the Administrator to be necessary for the enforcement of the Act; 2. Where handbooks have been obtained, a widespread failure to record the necessary information adequately; 3. A common practice of falsifying the record of hours worked by one device or another; 4. Universal violation of the minimum wage provisions of the Act in every homework inspection completed to date; 5. Probabilities of extensive violations of Section 7 and of the child-labor provisions of the Act; 6. A system of fixing piece rates and a method of distributing work which makes violations inevitable." (U.S. Wage and Hour Division, Industrial Homework Under the Fair Labor Standards Act in the Jewelry Industry: a Statement Presented Before the Administrator's Hearing on the Minimum Wage Recommendation of Industry Committee No. 17 for the Jewelry Manufacturing Industry, January 21, 1941, p. 34). Unquestionably, practices in the apparel trades are in no way different.

** U.S. Bureau of Labor Statistics, Bulletin No. 629, p. 162f.

The experience of these states with the elimination of homework has been uniform. Manufacturers have encountered little difficulty in making the adjustment to factory operations, and factory employment has increased, many former homeworkers being taken inside, despite the fact that evasion through the shipment of work to other states has continued to be a problem.*****

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* U.S. Division of Labor Standards, Bulletin No. 26: Industrial Homework Legislation and its Administration, p. 4. Among these States are California, Connecticut, Massachusetts, New York, Pennsylvania and Rhode Island (Ibid., pp. 4 and 51). At the time of writing, both houses of the New Jersey Legislature have passed a similar measure which now awaits the Governor's signature.

** Ibid., pp. 86-91.

*** Connecticut Department of Labor and Factory Inspection, Report, 1934-1936, p. 33.

**** U.S. Division of Labor Standards, Bulletin No. 26, p. 4.

***** New York Division of Women in Industry and Minimum Wage, Report to the Industrial Commissioner on a Review of the Operation of Homework Order No. 3 and Recommendation for Continued Regulation of Homework In the Artificial Flower and Feather Industry, October 16, 1939, pp. 3-5; Connecticut Department of Labor and Factory Inspection, Report, 1934-1936, p. 37.

The foregoing pages establish the fact that the homework system of production has outlived its usefulness. Since the advent of the factory system of production, it has steadily declined in importance, and today it is but a shadow of its former self. Its sole basis for continuance is low wages and long hours. With the limitations placed on hours and wages under the Fair Labor Standards Act, the survival of homework is impossible except on the basis of violation of the law. These facts, standing by themselves, point to the futility of attempts to regulate homework. They are buttressed by decades of experience with actual attempts at regulation. Under the circumstances, to permit homework to continue is to sanction violation of the law. If enforcement of the Act is to be effective, cognizance must be taken of the universally acknowledged fact that the evils of homework will be eliminated only with the abolition of the practice itself.

APPENDIX

INDUSTRIAL HOMEWORK PROVISIONS IN AGREEMENTS OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

As of July 15, 1941 there were on file with the Research Department of the International Ladies' Garment Workers' Union 39 collective agreements (i.e., agreements with associations of employers applicable to the individual firms belonging to the association) and 280 independent agreements (i.e., agreements with individual firms) which specifically prohibit homework. The following examples are typical of the language used in these agreements:

> "No work shall be given to workers to be made at home."
> (Agreement with Affiliated Dress Manufacturers, Inc., New York City)
>
> "No homework is to be permitted."
> (Agreement with Dress Association of Los Angeles)
>
> "It is further agreed that no work shall be taken out from the factory to be done at home and that same shall constitute a violation of this agreement, and the employer and the workers shall be subject to penalties."
> (Agreement with Chicago Association of Dress Manufacturers)
>
> "The Association agrees in principle to the abolition of homework."
> (Agreement with Pleaters, Stitchers and Embroidery Manufacturers' Association, Inc., New York City)

Agreements explicitly prohibiting homework are in effect in the States of California, Connecticut, Illinois, Massachusetts, Missouri, Michigan, New Jersey, New York, Ohio and Pennsylvania. Analysis of these contracts by industry reveals the following distribution:

Industry	Number of Collective Agreements	Number of Independent Agreements
Dresses	12	40
Embroidery	3	39
Sportswear & rainwear		9
Underwear	4	90
Children's wear	1	2
Blouse and skirt	4	10
Corsets	1	3
Robes		1
Belts		1
Custom made garments		36
Covered buttons	1	20
Buttonholes	1	2
Women's neckwear		10
Plastic buttons	1	1
Artificial flowers*	1	17
Total	39	280

In a small number of cases (involving 7 collective and 34 independent agreements) the union, not yet able to abolish homework has had to accept provisions permitting homework in some form. In general, those agreements cover employers who face a substantial amount of competition from non-union manufacturers who resort to homework on a large scale. Under the circumstances, union insistence on the cessation of homework would impose a serious competitive disadvantage on the employers under contract with it. Toleration of homework under union agreements, however, is based on recognition that homework is an evil and that its abolition is desirable. Its complete abolition in the industries involved awaits either governmental action which would apply to all employers alike or the extension of union control to the point where the unionized employers could consent to refrain from employing homeworkers without unduly damaging their competitive position. Pending abolition, agreements permitting the continuance of homework include measures for limiting or controlling it.

Thus, one of the two collective agreements in the Chicago embroidery industry permits homework only when the union is unable to supply experienced shop workers or when the existing shop facilities for such work are fully engaged. The other Chicago embroidery agreement, covering the pleating and stitching trade, prohibits homework on any operation performed in the factory. The Philadelphia embroidery contract prohibits homework except on hand work.

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* One collective and four independent agreements in the New York artificial flower industry prohibit homework except when performed by such workers as are permitted to do so under the terms of Order No. 3 prohibiting industrial homework in the artificial flower and feather industry, issued by the New York State Department of Labor. The Order permits homework only by those who were licensed homeworkers in the industry prior to March 10, 1938 and who are unable to adjust to factory work because of age, physical or mental disability or because their presence at home is required to care for an invalid.

In the belt industry, 3 collective agreements and 26 independent agreements permit homework. Two of the independent agreements are with Philadelphia manufacturers. One provides that no homework may be given out without prior union approval; and the other prohibits homework in all occupations except lacing or braiding of belts. The remaining agreements, all of which are with New York City employers, provide for prohibition of homework except on buckles, ornaments, lacing and braiding.

The only agreements in the children's dress industry which permit homework are with 8 manufacturers in Southern Texas. Under these agreements, hand embroidery is the only operation permitted to be done by homeworkers. However, the vigilance of the union with regard to the piece rates paid to homeworkers has resulted in the transfer to the factories of a large part of this work; and today, the number of homeworkers has shrunk to a fraction of the number employed a few years ago.

The collective agreement with a New York City association of neckwear and scarf manufacturers provides that any member of the association employing homeworkers must secure a certificate showing that such persons are free from any contagious disease; that rates of pay for homeworkers shall be not less than the rates paid in the factory; that the names and addresses of all homeworkers shall be filed with the union; and that no employer may distribute homework unless he employs at least 6 sewing machine operators in his factory.

This last mentioned agreement offers an interesting illustration of the gradual elimination of homework under union agreements. The agreement signed by the association in December 1936, for a period of one year, provided that:

> "The parties to this agreement recognize that it is advisable to minimize, control a nd, if possible, to eliminate homework existing in this industry; that the control of homework is essential for the protection of labor standards and for avoiding unfair competition."

Accordingly, in addition to the regulations referred to above, no employer was to distribute homework unless "at least 60 per cent of the articles of each type are produced in a factory" owned by the firm employing homeworkers. When this agreement was renewed for an additional year, the percentage of each type of articles required to be produced in the factory was raised to 66 2/3 per cent. This percentage was increased a year later to 75 per cent. This provision is now in force.

In addition to those contracts which contain specific references to homework, the files of the Research Department, as of July 15, 1941, contain 29 collective and 547 independent agreements which make no mention of the subject. In many instances, particularly as regards agreements with individual firms, the absence of a homework provision is accounted for by the fact that the issue of homework has never arisen as a practical matter. Some agreements, while making no specific reference to industrial homework, actually prohibit it by other types of provisions, samples of which are given below:

> "All garments produced by the Employer shall be made up on his own premises"
> (Agreement with the Twin Cities Dress Manufacturers Association)
>
> "The Employer agrees to have its excess work done in none but Union shops under contractual relations with the said Union"
> (Agreement with Chic Manufacturing Co., Peoria, Ill.)
>
> "... the Employers are engaged in the manufacture of dresses ... and have their work performed in their own shops or by contractors ..."
> (Agreement with Royal Miss, Inc., Scranton, Pa.)
>
> "The Association agrees that its members shall employ no workers who are not in good standing with the Union"
> (Agreement with the Associated Garment Industries, St. Louis, Mo.)
>
> "The Council agrees that all of its members who produce all or part of their garments on their own premises will maintain union shops, and that all of its members who have their garments produced by sub-manufacturers or contractors, or who purchase their garments from other manufacturers, merchants, jobbers, or wholesalers will deal only with such firms as conduct union shops."
> (Agreement with Industrial Council of Cloak, Suit and Skirt Manufacturers, Inc., New York)

Mr. MILLER. Thank you very much. We are going to be subject here to several votes.

Mr. Kildee, do you have any questions?

Mr. KILDEE. I would like to ask one question. The Secretary of Labor says that lifting this ban would make it more likely that homeworkers employed in such industry would report such violations. That does not make sense to me for any employee, but much less so for the undocumented. Would that be the case?

Mr. CHAIKIN. He is not living in the real world. Undocumented workers have to remain faceless, nameless, hidden from view. They are not going to take a chance to complain about an employer who has given them industrial homework where they can only make a dollar an hour and risk the very real probability of being picked up by the scruff of the neck and dumped back from where they came. In no way. They are a lot smarter than that. They understand the workings of the Immigration Service.

They understand from the people who are their neighbors and friends, the self-styled kitchen advisers, that the primary principle is stay cool and stay hidden.

Mr. KILDEE. They are almost like the old indentured servant or serfdom. They don't dare protest.

Mr. CHAIKIN. In many ways they are a lot worse off, Mr. Congressman. They are worse off because an indentured servant while he was in a posture of slavery at least the fellow had an investment in him, his master had an investment and fed him. While he did not live all that well, at least he got the minimum care to keep him alive and be able to work and to be helpful. These undocumented workers get no responsibility from anybody. I mean the Government is not responsible for them. Their master is not responsible for them. They have I suppose an exercise of free will. They can decide to take the work or not to take the work. If they don't take the work they can starve, so that is not a realistic option.

Mr. KILDEE. I agree their condition is worse. My grandfather had the good sense to break his bond because of oppression from a master and fled Ireland to come to this country. I do agree that a good indentured servant system, as bad as it was, probably would be better than this present system of undocumented workers.

Mr. CHAIKIN. I could not agree more.

Mr. MILLER. Thank you very much for your testimony.

Mr. CHAIKIN. Thank you.

Mr. MILLER. The next panel is made up of Ray Denison, Director of Legislation AFL-CIO, and Mr. Sverdlove, who is the president of the Jewelry Workers Union. You can either come right now and testify or you are going to have to wait until after this series of votes. If you want you may summarize. That also goes for Ruth Jordan, who is a member of the board of directors of the National Consumers League.

Mr. DENISON. I can take 2 minutes and be done.

Mr. MILLER. Fine. Ruth Jordan is in the room. We will give you 3 minutes, otherwise I will miss the vote. I am sorry to do this to you but it is either that or we can come back. It will be almost 40 minutes.

STATEMENT OF RAY DENISON, DIRECTOR OF LEGISLATION, AFL-CIO

Mr. DENISON. I would be pleased to simply speak for the record. The full statement I presume will be in the committee record. I merely want to go on record in behalf of the AFL-CIO that the Federation is in total opposition to the proposed regulation or the denial of the regulation. On May 7 the AFL-CIO Executive Council adopted a statement condemning the Secretary action and urging that it be rescinded. I just want to say for the record that it is our view that this action represents a surrender to exploitation and to greed by employers.

The question was asked here earlier who seems to be behind this kind of action? It would be our feeling that the sources behind this particular action are the same sources who have in the Congress thus far been interested in changing the unemployment compensation law, revising the Trade Adjustment Assistance Act, proposing the subminimum wage, wage exploitation, changing OSHA, the Health and Safety regulations, ending Davis-Bacon, ending the Walsh-Healey Act, all these labor protections that were devised and enacted over many generations.

So, all of these provisions are under attack. So this is not an isolated case. But all labor standards, whether they protect individuals in the garment area or in the seven industries we are talking about here today, all American workers are finding themselves threatened. This is simply a part of that pattern. I just wanted to say further that in terms of enforcement which is the heart of what we are talking about today on the Senate side at this moment there are further cuts being suggested in terms of enforcement and in this particular area alone 20 area offices would be closed under the proposals that have come forth from the Senate side.

So there will be 20 area offices closed that are now supposed to be enforcing the Fair Labor Standards Act. Two hundred and twenty compliance positions would be eliminated under their proposal. There would be 11,500 fewer investigations made under the proposal as it now stands. These I am quoting you are Department of Labor assessments. These are not ours.

These are estimates made by the Department of Labor itself. We talked earlier about a strike force. A strike force will be limited to one strike force in the Fair Labor Standards Act. So, even to use the plural is ludicrous. Also the Labor Department says in their comments on these expected reductions there is "An increased potential for noncompliance." That is the Labor Department again talking. We are talking in terms of 1982 budget actions whereas you know, Mr. Chairman, under the Latta-Gramm amendment this committee must make $11 billion in reductions.

In 1983 they must make $14 billion in reductions and in 1984 must make $17 billion in reductions. I assure you those reductions will come at the expense of enforcement in addition to the other programs. That is the extent of my statement.

[The prepared statement of Ray Denison follows:]

PREPARED STATEMENT OF RAY DENISON, DIRECTOR, LEGISLATIVE DEPARTMENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

Mr. Chairman, I appreciate this opportunity to present the views of the AFL-CIO on the Administration's proposals to revoke the regulations prohibiting industrial homework under the Fair Labor Standards Act.

Industrial homework is factory work done in the home. Industrial homework was a device developed by marginal employers to get work done as cheaply as possible without complying with factory regulations designed to protect the health and safety of workers.

In the absence of regulations, industrial homework means that an employer saves money for rent and utilities and hs pays little for equipment. He pays only for completed work and at extremely low rates of pay.

For the homeworker it means long hours at low pay.

For decent employers, it means unfair competition.

For factory workers, it is a threat to hard-won labor standards applicable to hours, wages, and safety conditions.

To the consumer, it means goods produced under unsanitary conditions which may present dangerous health hazards.

In the notice of proposed rule making, the Department of labor presents no basis for the proposal to legalize industrial homework other than to state that "the Department believes that repeal will have no 'significant economic impact . . . Upon a substantial number of . . . small (business) entities.' " The notice then adds that"This conclusion is based upon all information presently available to the Department, including the evidence submitted at four days of hearings held by the Department to obtain current information concerning the employment of homeworkers." The notice gives no supporting facts for the "so-called" findings. It is clearly designed to limit the ability of opponents to refute the "facts" on which the decision has been based as the "facts" have been kept a deep, dark secret.

The history of how industrial homework came to be regulated under the Fair Labor Standards Act is basic to an understanding of what the Secretary of Labor is proposing to abolish.

The minimum wage and overtime provisions of the Fair Labor Standards Act have applied to and continue to apply to all covered workers unless specifically exempt therefrom by some provision of the Act—whether employed in a factory or in their own homes.

Early inspections disclosed widespread, persistent, and flagrant violations of the minimum wage, overtime pay as well as the child-labor provisions of the Act in the field of industrial homework. These conditions were viewed as a threat to the maintenance of standards set up in the Act for factory workers and as a threat to the exploitation of homeworkers. Consequently, the Administrator issued special regulations governing the keeping of records by industrial homeworkers.

However, an exceptionally high rate of violations in the area of industrial homework continued to be uncovered through inspection procedures. This prompted the Administrator to hold public hearings on each of the seven industries in which this type of employment was markedly prevalent.

Regulations restricting homework were incorporated in the wage orders for these industries. Under the regulations, homework could be performed in these industries only by persons unable to adjust to factory work because of age or physical or mental disability or by persons who must remain at home to care for an invalid. The industries affected were: jewelry manufacturing, gloves and mittens, knitted outerwear, button and buckle manufacturing, women's apparel, handkerchief manufacturing, and embroideries.

Under the 1949 Amendments to the Fair Labor Standards Act, the Administrator was given specific statutory authority to regulate, restrict or prohibit industrial homework in order to safeguard the law's minimum wage standards against circumvention or evasion. In addition, authorization was given to regulate, restrict or prohibit industrial homework in the future. Section 11(d) of the Act ratified the homework restrictions issued by the Administrator prior to the 1949 Amendments. (Note: "Administrator" was changed to "Secretary of Labor" under Reorganization Plan No. 6 of 1950.)

Mr. Chairman, the Secretary of Labor may view the uncontrolled use of homework as a tool to "open up job opportunities." We are only too familiar with the kinds of job opportunities this will create and the job opportunities which will be destroyed. We find this an unacceptable trade-off. We would like to call the Secretary's attention to the views expressed by Chairman McNutt of the World War II Manpower Commission who considered uncontrolled homework a deterrent to maximum production even during the war. Although every effort was made to induce all available men and women to enter the labor force, Chairman McNutt stated that homework was a type of work the nation did not desire and officially opposed it even in areas in which labor was short. He pointed out that under proper supervision and efficient working conditions, not possible in homework, the nation was able to achieve the best utilization of its manpower. He noted that the restriction of homework in seven industries under the Fair Labor Standards Act and its total prohibitions under the Public Contracts Act had the effect of furthering the War Manpower Commission Policies at the same time as the basic labor standards prescribed in the Acts were maintained.

Mr. Chairman, in a 1960 review of the Administration of the Wage Determination Program of the Walsh-Healey Act, another labor standards act, George P. Shultz stated, "the purpose of the Act, then is a preventive and protective one. It deals with the problems of a possible downward spiral in wages under certain conditions, of the threat of a sweatshop, and of the runaway manufacturer and seeks protection for established wage structures. Administration of the Act should reflect this purpose and bear in mind the problems to which this Act is addressed."

We believe that the Committee might wish to suggest to all those who consider homework a boon to workers that they read the Shultz statement carefully.

The May 16 issue of the New Republic carries an article on "Supply-Side Sweatshops" by Mark Hosenball of Women's Wear Daily. In it he says, "The most frequently flouted of the latter (federal laws) are the federal child labor, minimum wage, and 40-hour week laws—all of which can be evaded through 'industrial homework,' the practice by which employers send work home with their employees."

We find it difficult to reconcile Secretary Donovan's strike force raid in the apparel factories in New York's Chinatown and his proposed raid in California with his anti-homework rules.

Mr. Chairman, we would like to call the Chair's attention to the statement issued by the AFL-CIO Executive Council on May 7, 1981 on Industrial Homework. (Copy Appended.)

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON INDUSTRIAL HOMEWORK

The Secretary of Labor has proposed to wipe out the 40-year-old ban against industrial homework in the women's apparel, knitted outerwear, embroidery, glove and mitten, button and buckle, handkerchief and jewelry industries. This action threatens to open the way for the return of the sweatshop to the home and to undermine and ultimately destroy traditional standards protecting workers, employers and consumers.

Industrial homework became a scourge of the apparel industries because they are highly labor-intensive and require only simple sewing machines to operate. The horrors of industrial homework—substandard wages, child labor, long hours of work, unsafe and unhealthy working conditions—became so rampant that states began to regulate homework more than 80 years ago.

Forty years ago, the federal wage and hour authorities banned homework in these industries because it was clear that the enforcement of federal wage and hour standards is impossible in the home. Thirty years ago, Congress ratified these bans on homework. Now the Secretary of Labor proposes to turn back the clock and disregard the experience of many decades, bringing back the sweatshop to the kitchens of city tenements and country homes in all sections of the country.

Moreover, since many people engaged in homework are illegal aliens, who work without records being kept and live in fear of any government authorities, violations of the minimum wage laws by their homework employers will go unreported by these workers for fear that they will be deported if they reveal themselves in complaints to the Labor Department. Clearly, this will encourage employers to divert work from factories to unprotected workers working at home.

At the same time, the Secretary of Labor has announced plans for drastic cutbacks in enforcement staff. This will compound the difficulty of enforcing wage and hour standards for all workers.

The AFL-CIO strongly opposes the Secretary of Labor's proposal to end the 40-year-old federal regulations prohibiting homework in the women's apparel, knitted outerwear and five other related industries. We also urge the Secretary to reverse the proposed cuts in the Labor Department's enforcement staff and provide for improved, not weakened, enforcement of the Wage and Hour Law.

Mr. MILLER. Thank you very much for your participation and your entire statement will be included in the record.

Mr. Sverdlove.

STATEMENT OF LEON SVERDLOVE, PRESIDENT, JEWELRY WORKERS UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, ACCOMPANIED BY JOSEPH TARANTOLA, PRESIDENT, LOCAL 1J (SEIU)

Mr. SVERDLOVE. Mr. Chairman, we are, of course, very pleased to have this opportunity to present our views to this particular committee.

By way of introduction, I was an apprentice to the jewelry industry in 1925 and have for the past 56 years worked at the bench. I also have been an officer in various capacities of the Jewelry Workers' Union.

For the record, I would say that my position today is now as director of the Jewelry Workers' Division of the Service Employees International Union.

The problem we are addressing today——

Mr. MILLER. Mr. Sverdlove, let me interrupt you.

I am going to have to ask you to be very, very brief or otherwise I am going to have to leave, and I will not be back for 30 or 40 minutes.

Mr. SVERDLOVE. I will enter this in the record and make some general comments.

We are in complete agreement with the sentiments expressed here today by practically everybody, that this proposal from the Secretary of Labor absolutely is uncalled for and flies in the face of the reality which workers today, both legitimate and illegitimate, face.

I think that part of this is being presented in an aura of going back to the good old days and I am wondering where that reasoning comes from and how practical, if we can even use that word, it is to be applied to life itself.

Is the Secretary of Labor's reasoning something that could be discussed as an attempt to get back to real living by abolishing supermarkets and opening up again mom and pop grocery stores, with all of the nostalgia that that would bring to us?

Going a little far afield, I am reminded of the ill-fated efforts in the early days of the Chinese Republic when they started smelting furnaces in every backyard, millions of them, and they were by some people touted as the way it ought to be done.

I feel that in any consideration of the efforts made today to abolish the existing homework laws, as far as I am concerned, they need enforcement and need enlargement, rather than their removal from the lawbooks.

Therefore, I will conclude by saying that our union first participated in campaigns against homework starting in 1919, more than 60 years ago. It is an unhappy moment for us to be around at a time when we see these laws which meant so much and were such a protective device for workers now being suggested to be removed from the books.

Thank you, Mr. Chairman.

[Prepared statement of Leon Sverdlove and Joseph Tarantola follows:]

PREPARED STATEMENT OF LEON SVERDLOVE, DIRECTOR, JEWELRY WORKERS DIVISION AND JOSEPH TARANTOLA, PRESIDENT, LOCAL 1J, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

We are pleased to have this opportunity to speak on behalf of the ten thousand jewelry workers who are members of our union, as well as for the 40 to 50 thousand unorganized jewelry workers.

The problem we are addressing today concerns the regulation of industrial homework in the jewelry industry. I would like to begin by giving a brief overview of the nature of the industry.

Jewelry manufacturers are concentrated in the northeast—with a large percentage of costume jewelry manufacturers in the state of Rhode Island. Most of the manufacturing is performed by small job shops. These companies employ large numbers of aliens and minorities, including undocumented workers, many of whom do not speak English. The workers are 85 to 90 percent unorganized, and earn $1 an hour less than production workers in other industries.

Because costume jewelry manufacturing involves a great deal of handwork—such as carding, looping, linking, and assembly of small pieces—it readily lends itself to performance of work in the home. In fact, a full day's work is easily transported in a shopping bag.

In the early part of this century jewelry manufacturers were abusing homeworkers to such an extent that states began to regulate them. Unsafe working conditions and flagrant violations of wage and hour standards and child labor laws were so prevalent that forty years ago, federal wage-hour authorities banned homework in seven industries, including the jewelry industry, unless the workers were disabled or elderly or care for invalids.

Today, the Department of Labor proposes to turn back the clock and lift those restrictions. According to the Secretary of Labor, the restrictions "deprive Americans of job opportunities"; and by removing the restrictions the Department of Labor is not reducing its "commitment to ending workplace violations wherever they occur".

Our response to this proposal is three-fold:

Lifting the restrictions will have a devastating impact on the wages, hours, and working conditions of jewelery workers.

Enforcement of wage, hour, and safety standards in the home is absolutely impossible.

Removing the ban on industrial homework will displace rather than provide more job opportunities for American workers.

We know the wages and working conditions for homeworkers in the jewelry industry are poor, because there is a high incidence of illegal homework, in Rhode Island in particular. We know that jewelry workers in the home are usually earning a piecework rate that amounts to $1 to $2 an hour, and sometimes less than that. The homeworkers are working long hours into the night, so that these wages are a violation of overtime standards as well as the minimum wage.

The homes in which the jewelry workers are performing these industrial operations are cramped, filthy, and unsafe—reminiscent of the "sweatshops" in the early part of the century. An example of crowded working conditions was documented in Rhode Island in 1978. In one year, one Southeast Asian family earned $60,000 manufacturing jewelry in one home. At 1 or 2 dollars an hour, that's quite a number of workers and working hours being performed in one home.

Perhaps the most egregious abuse of all is the widespread violation of child labor laws associated with industrial homework. Officials from the Rhode Island Department of Labor cite numerous examples of the abuse of child labor. And truant officers in the state complain that children are being kept out of school to perform the work.

The restrictions on homework were originally imposed because enforcement officials found it impossible to enforce wage and hour standards in the home. Can these standards be enforced in the home today?

The answer to that question is undeniably—no. In the first place, drastic cutbacks have been proposed in federal enforcement staff. Enforcement officials are already too few in number to successfully monitor industrial homework.

Even if homework restrictions are lifted, manufacturers who are paying subminimum wages will continue to falsify their payroll documents and minimum wage laws will continue to be circumvented.

The Department of Labor argues that the rule change will encourage workers to report minimum wage violations. But undocumented workers and other exploited workers who fear losing their jobs will not report violations.

Enforcement of the regulations has been largely impossible because of the language barrier, because of the large scale of industrial homework operations, and because so much of the homework is performed after the regular workday. Even more importantly, detection is impossible when pieces of jewelry can be transported in shirt pockets and easily hidden.

Lifting the restrictions on homework will not serve to increase job opportunities in the jewelry industry. It is important to note that much of the jewelry being produced in the home is being produced by full-time workers already employed in the factories.

Removing the ban on industrial homework can only divert work from the factories, where workers can be protected by law, to the home, where no control whatsoever can be imposed over wages, working conditions, and the employment of minors.

The situation in Rhode Island is very serious. But we are not concerned about the impact of this proposal on Rhode Island alone. Once the ban on industrial homework is lifted, the work will be taken away from our organized shops all over the country. The work will be taken away from our members who have fought for sixty years for decent wages and working conditions, and placed in the homes where the work will be performed at subminimum wage levels, without health and welfare benefits, and without the guarantee of a safe and healthful working place.

In summary, the proposal to remove the restrictions on industrial homework is an irresponsible, regressive, and disastrous decision. The restrictions are as valid and appropriate today as they were forty years ago, and should not be subject to political pressure at the expense of the workers and their families.

We urge that the restrictions on industrial homework be maintained and their enforcement be fully implemented.

STATEMENT OF JOSEPH TARANTOLA, PRESIDENT, JEWELRY WORKERS' UNION, LOCAL 1J, SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), AFL-CIO

Mr. **Tarantola**. I am Joseph Tarantola, president of the Jewelry Workers' Union in New York.

I would just like to add to that, that in 1919, as Mr. Sverdlove indicated, the U.S. Department of Labor, through its Women and

Children's Bureau, conducted a study and a survey which exposed the horrors of homework and child labor. I submit to you, and allow me to read just one portion of it, and then I would like to submit the International Jewelry Workers Union Almanac, which contains the testimony of these committees and these investigators.

I would like to read this to you:

> From the early days of civilization, protection to children became the aim and objective of humanity. How intensive this hustling must be of utilization of women and children in homework is shown from the fact that workers were obliged to return with work completed at six o'clock in the morning after same was accepted in the evening. Does the reader recollect calling the child in the morning, awakened after a night of children's dreams, with its red lips and rosy cheeks, and fresh and happy with its hand outstretched? Let us bring greetings to the morning that brings another day of joy, a delightful sight to every adult.
>
> It is different with the jewelry workers' children in Providence, Rhode Island. In the morning, after a night of hustling, they present a sight so pitiful that no parent could picture it and no pen can describe. They are the incarnation of fatigue—listless, physically retarded and utterly worn out, pretty little human beings.

I submit that along with that perhaps we should remind the Department of Labor that this was an investigation of the Department of Labor of the U.S. Government and add to it that the dangers of homework in the jewelry industry involved the utilization of oxygen tanks, polishing materials, polishing machines, the spreading of dust and metals, cleaning solutions that included cyanide and sulfuric acid.

The danger of those things was combined in tenament houses where hundreds upon hundreds of families resided, or in wooden-frame houses where there were blocks upon blocks of homes and people could be destroyed through the utilization of homework and the standards that would be applied to them.

Thank you, Mr. Chairman.

Mr. **Miller**. I give you my apologies for having to rush you through your testimony. This will be put in the record in its entirety.

STATEMENT OF RUTH JORDAN, MEMBER, BOARD OF DIRECTORS, NATIONAL CONSUMERS LEAGUE

Ms. **Jordan**. I know the restraints that you are operating under, and I will submit my statement for the record and just make three points, as many people have made points.

It is kind of sad that we are testifying last here when the National Consumers League began this battle and we are the oldest consumer organization in the Nation. We are committed to the belief that no item, service, or garment is a bargain item if it is purchased at a cost of a laboring person.

I want to make three points, very quickly:

An enormous public relations campaign is going on on behalf of the knitters of Stowe, Vt., and we think one of the things that must be said here is that it is full of untruths. Nothing in the current regulation prohibits those knitters from knitting and selling ski caps. That is their right under our economy.

The law prohibits their employer from requiring them to do this work in their homes, and from exploiting them in the course of doing this work under conditions that cannot be policed.

We recommend that rather than permit a rural exception, we feel very strongly it should not be permitted. We testified about this before the Department of Labor, that the knitters could form a producer cooperative and they might be willing to hire Mr. Putnam as their manager and pay him a salary. Mr. Putnam may not like that role as a salaried worker and he may prefer to continue as a manufacturer; but if he does, he will have to build or rent a factory rather than use the space, light, and furniture now being supplied to him without charge by the Stowe knitters.

I think this is an important thing to mention here.

I will submit for the record the efforts of the U.S. Department of Agriculture to start rural cooperatives among craftspeople. This has been totally ignored, and this testimony has been presented to the Department of Labor.

I would like to point out that this issue is a woman's issue; it is more a woman's issue more than anything else. Women already earn less than 59 percent of what men earn, and as in the knitwear case it is the women who are workers. They are denied the ability to upgrade their skills and economic well-being.

Finally, while it is not fashionable in the current mood of the Congress, it was the firm intent of Congress to pass the Fair Labor Standards Act and amend it in 1941 to ban homework in these industries because these were specifically dangerous industries that permitted these excesses. They were to encourage working Americans to form collective bargaining organizations.

We believe the isolation of workers in home situations denies them the right to meet with their coworkers and determine what conditions are like for each of them and resolve that they could do so if they wished to, to improve their economic lot in collective bargaining.

Finally, just let me say that we are for an extension, as has been suggested, of industrial homework prohibition to all industrial homework. It is a growing threat in the area, and we are concerned about that, and our testimony does point that out.

Finally, we are grateful to you for showing some courage in this Congress, where it has been sorrowfully lacking.

Mr. MILLER. Thank you.

[Prepared statement of Ruth Jordan follows:]

PREPARED STATEMENT OF RUTH JORDAN ON BEHALF OF THE NATIONAL CONSUMERS LEAGUE

Chairman Miller, Members of the Subcommittee. We are grateful to you for calling these hearings and for asking for the consumer point of view. Your leadership is a refreshing change in the current political picture. We have grown saddened by Members of Congress who sit by and allow 50 years of progressive legislation to be repealed by executive fiat without raising a hand or a voice. We hope that your example will give others the political courage they seem to lack.

The National Consumers League is America's oldest consumer organization. It was founded more than 80 years ago based on the belief that goods and services purchased at the expense of the workers who produced them are no bargain for the American consumer. Since those early days of fights against child labor, industrial homework and industrial carnage, NCL has become active in fighting for a marketplace that protects the consumer against wrongful business practices that cheat them of their money, labor and confidence in our economy. The League is proud that it has been a training ground for outstanding Americans. Frances Perkins got her start as an NCL legislative representative in Albany, New York and Esther

Peterson, perhaps the best known modern day consumer leader is an active League member and recent past President.

Last February we testified before a panel of the Wage and Hour Division of the U.S. Department of Labor and urged the panel to retain the current regulations that prohibit homework in seven specific industries. We went further. We argued against any exceptions to the standard for rural counties and called for the extention of the prohibition to all industrial homework.

This may seem to be extreme. The current political mythology tells us that regulation is bad and that this particular regulation unreasonably penalized a group of ski hat knitters in small towns throughout Vermont that would no longer be able to knit if the current regulation was not repealed.

That public relations campaign on behalf of the knitters employer is full of untruths. Nothing in the current regulation prohibits the knitters from knitting and selling ski caps—that is their right under our economy. The law prohibits their employer from requiring them to do this work in their homes and from exploiting them in the course of doing this work in conditions that cannot be policed.

We recommend that rather than permit a rural exception for this work, that the knitters form a producer cooperative. They might in fact be able to hire Mr. David Putnam, President of Stowe Woolens, Ltd. as their manager and pay him a salary for marketing their goods. Now, Mr. Putnam may not wish to be a salaried worker and may prefer to continue as a manufacturer. In that case he will have to build or rent a factory rather than using the space, lights, heat and furniture now being supplied to him without charge by the Stowe knitters.

It has been the policy of the United States Government in fact to provide rural workers with support in developing craft cooperatives and other cooperatives. Both the Community Services Administration and before that the OEO provided extensive technical assistance to cooperatives in the country and the city. The U.S. Department of Agriculture provides support to the formation of cooperatives. It estimates that more than 37,000 people belong to organized craft associations in six rural areas. It makes loans to craft cooperatives to help them purchase equipment and materials through Farmers Home Administration. Other organizations which support craft cooperatives include the USDA Extension Service and Farmer Cooperative Service, the U.S. Department of Agriculture, the Economic Development Administration, the U.S. Department of Commerce, the U.S. Department of Interior, Labor and HHS.

According to a USDA publication entitled: "American Crafts—a rich heritage and a rich future," data collected from cooperatives that have supplied some degree of technical and marketing assistance to their members indicate that woodcraftsmen, for example, are grossing $6 an hour or more. Potters, sculptors and glass craftsmen are earning more than is possible in other industries in their area. And probably because they are predominantly female, needle crafts workers are earning just about the minimum wage.

Another publication entitled "Cooperative Approach to Crafts" describes a variety of arrangements that craft workers can structure to market their goods. Among them is the hired management approach which permits the members to select a manager to direct the operations of the cooperative and to assist them in marketing their goods.

The Artisans Cooperative in Chadds Ford, Pa. which particularly concentrates on assisting women in rural communities decribes their role and mission most succinctly:

"Artisans Cooperative is a support organization representing skilled artisans throughout this land, from the coast of Maine to the Appalachian Mountains; from the plains of the Deep South and the woods of Minnesota to reservations of Native Americans; and beyond.

Artisans Cooperative puts artisans in control of their own market however far from their local community that market may be, and by control of that market is reversing ancient exploitation by the middle-man. This exploitation is especially heavy for artisans living in isolated country villages without knowledge of the outside marketplace. Artisans Cooperative members have a majority voice in the control of their market through representation on the Board of Directors * * *"

A changing technology is another compelling reason for an extension of the current regulations to all industries. Home computer terminals are now cheap enough and the technology sufficiently portable so that necessary equipment for home automatic typing, accounting and bookkeeping and envelope addressing can and is being done by home workers. This kind of homework is no less damaging to the wages of American workers because it is connected with white collar occupations. It could have a powerful influence on efforts to organize the nation's offices, produce shoddy services for all Americans, undercut small businesses and exploit homeworkers and their families.

A REVIVED ISSUE

The economic situation of today marked by high inflation and unemployment seems to have led to the reemergence of industrial homework along with increased violations of other wage and hour laws as well.

The existence of large communities of immigrants from Indo China, Latin America and the Caribbean has set the stage for their exploitation, often by those who speak their native language. This is not a new development. In the 1950's in the town where I grew up—Brooklyn, New York—Italian immigrants in the post-war era brought many relatives to this country where they gratefully worked at home making dolls and doll clothes. These "relatives" were exploited, paid lower wages and were often told that they were repaying transportation costs. It was a form of indentured servitude. In this current period where we are admitting masses of new immigrants who are asked only to provide a "sponsor", there is a sad potential for that "sponsor" to be an employer who will use the dependency of this new worker to violate the wage and hour laws with impunity. Many English speaking American citizens do not know their rights under the law. How can we expect these new Americans and residents to demand their rights when their situation is so desperate.

This past weekend's Washington Star featured a report on Cuban immigrant workers living in cars in Maryland. Surely we cannot imagine that people in such a desperate situation will go to the wage and hour division of their local Labor Department and seek a refund for back wages.

There have been frequent stories in the media and in the newspapers about present-day violations which only hint at the extent of the problem. Sixty Minutes, for example recently estimated that up to 50,000 workers in New York's garment industry and particularly in Chinatown, are employed in sweat shop conditions. The Los Angeles Times reported as many as 40,000 workers are part of a "huge, hidden, illegal work force being cruelly exploited by the Southern California garment industry." Under California's progressive law which allows for the confiscation of goods illegally produced in homework situations, over $2 million dollars, worth of goods were consficated in recent year. Recent Wage and Hour Division task forces which conducted investigations in Miami, New York, Los Angeles, Houston and Dallas recorded extensive abuses of wage and hour laws. For example in Miami, garment manufacturers were found to have cheated workers of nearly $1 million worth of wages. This is a clear indication that the industry is still riddled with these practices. Where there are wage and hour violations in the factories, there are surely going to be extensive violations in homes where there is no control over recordkeeping. The records of these raids should be a part of this committee's record.

Unfortunately men's and women's apparel manufacturing is not the sole culprit. The knitted outerwear industry has also been accused of serious violations in the pending Vermont knitted skiwear case. Other prohibited industries would seem to be similarly suspect under the current set of economic and immigration conditions that exist in our country.

The National Consumers League believes the homeworker regulations and prohibitions are needed more today than at any time in the recent past. They are necessary to maintain the integrity of the Fair Labor Standards Act which Congress intended to protect the income level of the American people, the public health, the general economic well-being of the Nation and to generally perpetuate good and caring public policy.

Currently there is an anti-regulatory mood in the body politic which seems to be willing to sacrifice all regulations regardless of their impact.

Regulations are not bad. The conditions that encouraged their development are. We must be wary to examine all efforts to throw out regulation in light of the history of abuses, the current state of the industry and the accruate reading of the intent of Congress when the law was passed.

Everything we know about these industries show that the business community is still not so enlightened as to render these regulations unnecessary. We believe the Department of Labor's primary obligation is still to protect the millions who cry out for protection including those who because of ignorance or language barriers, cannot know the law or because of fear cannot demand their rights under the law.

There are several predominant reasons why the industry homework regulations should be enforced:

1. Preservation of the minimum wage rate is of prime importance to the NCL. As the economic situation worsens, unrestricted homework and unenforced regulations

tend to increasingly undermine the minimum wage. Because homework can be performed at all hours of the night and day and under any conditions, the standards for wages, hours and overtime are rendered meaningless. Add to that the fact that the employee must voluntarily maintain her own records there is virtually no way to assure that workers are not being exploited or paid a substandard wage. The wages of industrial homeworkers are notoriously lower than their factory-based counterparts and they are generally denied the fringe benefits their factory sisters receive. One of the principal abuses of industrial homework is the cruel deception that a worker is increasing her economic independence when she is, in fact, becoming increasingly dependent, struck on the lowest rung of the wage ladder.

2. Unfair competition to factory manufacturers is another concern. A fair wage policy fairly applied to all manufacturers is the only way of assuring fair competition in the marketplace. We believe that honest manufacture must be outraged by industrial homework and will join us in demanding the strictest enforcement of the law. No American manufacturer should be required to compete with a substantial industrial homework wage. We remind consumers that there is no bargain in industrial homework. You pay the same for goods produced at fair wages as those produced under exploitative circumstances.

3. All Americans must be concerned about child labor. That hideous blot which we had all but eradicated is likely to reappear if industrial homework is permitted. NCL's investigations in the past have shown that where industrial homework is permitted, children are often kept home from school, away from studies, even sleep and other essential developmental activities to meet production demands or increase output in flagrant violation of child labor laws.

4. Occupational Health and Safety Laws are ignored in industrial homework situations. Without these, the workers are placed in jeopardy because there is no inspection of machinery, no inspections for observance of fire regulations, no inspection of potentially harmful chemicals, solvents or other materials potentially abusive not only to the worker but to her family as well.

The NCL believes that even the public may be harmed if a contagious disease is transmitted to them via the home-manufacturered product. Tuberculosis is once again on the rise because of overcrowded and unsanitary living conditions in many immigrant communities.

5. Although it is not fashionable in this current mood of Congress, it was the firm intent of the Congress that passed the Fair Labor Standards Act in 1938 and then amended it in 1941 to ban homework in these seven industries, to encourage working Americans to form collective bargaining organizations. We believe the isolation of workers in home situations denies them the right to meet with their coworkers, determine what conditions are like for each of them, and resolve if they so choose, to improve their economic lot through collective bargaining. We believe industrial homework denies American workers their basic right to organize into unions.

6. Our national Social Security system, worker's compensation, disability and unemployment insurance are predicted on the idea that each wage earner will pay his or her fair share into making the system operate. Failure of the employer or the homeworker to file proper State, county and Federal taxes not only denies that individual her right to collect benefits that are rightfully hers.

7. Enforcement of the industrial homework prohibition is an important woman's issue. It is women who are already earning less than 59 percent of what men earn. As in the pending knitwear case, it is women who are the workers, isolated and denied the ability to upgrade their skills and economic well-being. Testimony at the Vermont hearings showed that Vermont women earn considerably less than male workers. For that reason the Nation has a particular interest in maintaining and improving the income or working women.

One of the key questions in this hearing is whether there should be a differentiation made between urban and rural homework. NCL believes there should not be. In spite of the recent situations involving former cottage-industry workers in New England, the majority of industrial homework and of homework violations continue to be found in urban areas. If rural workers were more easily certified as exemptions from the four-decade old regulations, we might expect to see a growth in the flow of industrial homework away from urban centers into rural areas. There would be certainly an incentive for employers to increase homework opportunities by seeking employees who live at some distance from the manufacturing facility. Enforcement problems, therefore, would be intensified.

RECOMMENDATIONS

The National Consumers League does not believe that workers or the economy need a relaxation or elimination of certification requirements in these restricted industries. Rather, we support stronger, more comprehensive enforcement until industrial homework is entirely eliminated. Currently, enforcement efforts are understaffed and underfunded. The Wage and Hour Division is able to investigate only 2.5 percent of the established businesses each year. For all 50 States there are fewer than 1,000 compliance officers to enforce all wage and hour standards. Now the Administration is cutting that force again. There are thousands of industrial homeworkers estimated to be working. Violations and infractions will surely increase as these conditions go unchecked and unremedied.

NCL believes several measures are appropriate. We would like to see the abolition of industrial homework entirely. Barring that possibility, we believe it is crucial that there be strict enforcement against violations in the seven proscribed industries. We support additional funding, staffing and technical resources to undertake that effort.

We support those special enforcement task forces such as I described earlier that would go into areas with known violations and make intensive investigations of those industries known for wage chiseling. These are the same industries likely to encourage homework violations.

We urge greater cooperation between Federal and State enforcement agencies in such successful programs as have been conducted in New York and New Jersey to maintain ongoing records on industries which may need special attention or regulation and to protect those workers in particular need.

Finally, the Department has, we believe an obligation to continue aggressive and intensive public education efforts. The DOL has an obligation to publish information about violations from its files, then such publication is legal. The public is entitled to know that regulation that protects people is good regulation.

Our Nation for the last 50 years has moved steadily toward progressive solutions for industrial and economic problems. It is the fervent hope of the National Consumers League for which I am testifying today that we will not repeal the progress of the last decades and return to the dark ages of industrial despair.

Mr. MILLER. Thanks to everyone who participated in the hearing this morning.

I would expect that the hearing record will be in print shortly, at least for review by those who want to submit additions or amendments to their remarks.

Thank you.

The committee stands adjourned.

[Whereupon, at 1:50 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

STATE OF VERMONT,
OFFICE OF THE ATTORNEY GENERAL,
Montpelier, Vt., May 19, 1981.

Hon. GEORGE MILLER,
Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor, House Office Building, Annex I, Washington, D.C.

DEAR MR. CHAIRMAN: I respectfully request that the attached testimony be entered in the record of the Subcommittee hearings concerning homeworker regulations.

Sincerely,

JOHN J. EASTON, Jr., *Attorney General.*

Attachment.

PREPARED STATEMENT OF JOHN J. EASTON, JR., ATTORNEY GENERAL OF VERMONT

Over forty years ago, Congress enacted the Fair Labor Standards Act of 1938. In so doing, it sought to legislate against labor conditions detrimental to a minimum standard of living required for the general well-being of workers. The law sought to give workers such basic rights as a minimum wage, overtime benefits, and proscribe child labor. These benefits were laudable in 1938 and they remain so today. Pursuant to the authority granted by the Fair Labor Standards Act, the Department of

Labor has promulgated regulations restricting the employment of homeworkers in certain industries. It is the coverage of these regulations, not the Fair Labor Standards Act itself, which I wish to discuss in this testimony.

I am offering testimony on the basis of my experience as a lawyer dealing with persons engaged in homework, my experience as a candidate for public office observing employment conditions around the State of Vermont, and my experience as the administrator of a public protection law. Hopefully, as a result of this background, I can offer some viewpoints which perhaps would not otherwise be expressed.

As an attorney, I am frequently involved in the interpretation of laws and determining the scope of their coverage. Whenever ambiguities exist, any lawyer tries to determine legislative intent behind the statutory enactment. I have reviewed some of the history of this law and find that it was originally enacted to prevent the exploitation of workers and to provide them minimal standards of living necessary for their health, efficiency and general well-being. Therefore, any regulation promulgated under such law should endeavor to do the same. Homeworker regulations simply are not necessary in Vermont to eliminate such deplorable conditions as existed elsewhere in the 1930's.

During 1980 as I travelled around the State, I visited practically all of our communities, campaigned in numerous factories and working places, and met thousands of Vermonters in their homes and at their businesses. I can honestly say that I found no case in which the homework was being utilized as a means of evading the coverage of the Fair Labor Standards Act. I found no child labor; I found no night work by women; I found no unhygienic working conditions in slum tenements or rural dwellings; I found no illegal aliens being exploited because homework was the only work they could do; and I found no threat by homeworkers to the minimum wage and the provisions of the Fair Labor Standards Act of 1938. In fact, I found the working conditions in the homes of those members of Vermont's cottage industry to be better than those of the factories which I visited—factories in which workers are covered not only by the Fair Labor Standards Act of 1938, but also such newer laws as the Occupational Safety and Health Act.

During my legal career, I have had the good fortune to head the Vermont Consumer Protection Division of the attorney general's office and enforce Vermont's consumer fraud law. This law is a law which is designed to protect the public, very must the same way as the Fair Labor Standards Act of 1938 is designed to protect workers. Under Vermont's consumer fraud law, the attorney general has promulgated regulations designed to protect consumers much the way the home worker regulations are designed to protect homeworkers. With this experience, I would suggest that those who administer laws have a great latitude in terms of their administration. I therefore applaud the Secretary of Labor's decision to remove the homeworker regulations which did not truly serve the purpose for which they were intended.

It appears to me that the home worker regulations are overbroad and outdated. They were based on conditions present in the 1930's and early 1940's. Today, a blanket prohibition on homeworkers is simply not necessary to assure that a homeworker receives a minimum standard of living. The day is past when government should tell a woman, who wishes to work in her own home, on her own knitting machine, at her own speed, her own time and convenience, that she may not do so. The time is past when people automatically left their homes to work in factories. Many Vermonters cannot reach a factory in which to work because of such considerations as children, a disabled spouse, lack of suitable transportation, or the pure economics of leaving the home. In this day and age of high energy costs and expensive transportation, homework may present a very real and effective way of making workers self-sufficient and not dependent on government. An example of the economics of working in a factory at $4 per hour is attached to my testimony. It shows that after deducting the cost of commuting and day care, a $4 per hour wage is equivalent to only $2.11 per hour. Surely, homework is preferable to this form of substandard living.

Our situation in Vermont may well be different from that which exists in the cities. As I have already stated, Vermont's homeworkers are not those who were forced out of the factory to find refuge in slum tenements or substandard working conditions in someone else's home. Vermont's cottage workers are a fiercely proud and independent people who truly are their own bosses, doing a job that they want to do, free from the interference of an outside employer. The removal of the restrictions presented by the homeworker regulations are a great step forward in allowing Vermonters the self-determination which they seek.

Thank you.

Assume a factory worker makes $4 per hour or $8,320 per year—52 weeks—is married, with one child—preschool—and drives a compact car 10 miles one way to work.

To find biweekly net pay:

Biweekly gross	$320.00
Less 200 miles @ $.27/mile (per State Energy Office; Hertz assumes $.38/mile)	54.00
Total	266.00
Less day care: assume 42.5 hours/week (½ hour/day besides working hours); State reimbursement rate=$1.14/hour=$48.45/week	96.90
Biweekly net pay	169.10
Per hour pay	2.11

STOWE WOOLENS, LTD., STOWE, VT., *May 13, 1981.*

KATHLEEN N. NORTON,
Associated Press, c/o Burlington Free Press,
191 College Street, Burlington, Vt.

DEAR MS. NORTON: Regarding your article in today's Free Press (copy enclosed) on Labor Secretary Donovan's Ruling abolishing the Homeworker Regulations:

We commend Secretary Donovan's Ruling.

Our position continues to be that the Homeworker Regulations are blatantly unconstitutional and anti-family, that they encourage energy waste, that they are discriminatory, and that they eliminate work opportunities.

I trust that those of us from Vermont and the others who came forward contributed to the perception which prompted Secretary Donovan's Ruling revoking these Regulations.

The claims being made by the opponents of the Ruling that "sweatshops" and other labor abuses will flourish following the revocation of the Homeworker Regulations are unfounded for two main reasons:

First, the legitimate governmental concerns reflected in the Fair Labor Standards Act including minimum wage, overtime and prevention of child labor are in no sense abrogated by the abolition of the Homeworker Regulations. Workers' rights under the FLSA continue undiminished and remain to provide full protection.

Second, a careful reading reveals that the Homeworker Regulations are legally inapplicable and, therefore, ineffective against "sweatshops". This is because the Homeworker Regulations outlaw homework only as it occurs in a "home, apartment, tenement, or room in a residential establishment". "Sweatshops" are customarily found in commercial buildings. Accordingly, the Homeworker Regulations are, and always have been, essentially useless against "sweatshops".

Lawful homework increases job opportunities, saves energy, and enables people to earn wages while, at the same time, tending to domestic responsibilities. In our current energy and economic predicament, these advantages should be encouraged rather than discouraged. Much is gained and nothing is lost by Secretary Donovan's Ruling.

What then are the true motivations of the opponents of the Ruling? The pernicious aspects of the Homeworker Regulations, their inapplicability to "sweatshops", and the benefits of homework are obvious. Why then is this skirmish about a relatively inconsequential issue being treated as a full fledged battle? Wouldn't this energy be more productively focused on matters of more major concern?

The Homeworker Regulations are an outdated and ineffective anachronism of the Thirties. Their demise should be welcomed.

Sincerely yours,

DAVID E. PUTNAM, *President.*

Enclosure.

[From the Burlington Free Press, May 13, 1981]

KNITTERS RULING OPPOSED

(By Kathleen M. Norton)

MONTPELIER—A U.S. Labor Department ruling that would legalize work at home will be challenged by the International Ladies' Garment Workers Union.

Wilbur Daniels, executive vice president of the union, said in New York Tuesday union officials have not decided whether to make the challenge in court.

Labor Secretary Raymond Donovan has proposed withdrawing all regulations governing work at home. His action was a victory for a group of southern Vermont knitters who took on the federal government in their battle to win the right to work at home.

The decision was expected to bring strong opposition from labor groups because it would lift all regulations on so-called cottage industries. The deadline for filing a challenge is June 5.

Donovan has the final say unless his ruling is challenged in court.

A spokesman for the New England Legal Foundation, which represented the knitters, said the organization plans to intervene in any challenge.

The House Subcommittee on Labor has scheduled a May 19 hearing in Washington. A spokeswoman for Rep. George Miller, D-Calif., chairman of the panel, said the hearing was called in response to Donovan's decision.

The Labor Department last year ordered the knitters who sold ski hats and other items to CB Sports in Bennington to halt their work. The federal government also filed suit against CB Sports. That action is pending.

The Labor Department claimed it was protecting the knitters, but the home workers said they did not want the help of the federal government. They testified at hearings in Washington and Burlington.

Labor representatives also testified, saying that even though the knitters liked their work, they could fall prey to large companies that want to take advantage of the cottage industries.

Donovan said the hearings produced evidence that minimum wages are not being violated in any greater degree than in unrestricted industries.

State Transportation Secretary Thomas Evslin, who championed the knitters' cause while a candidate for U.S. Senate last year, said he doubts any challenge to Donovan's decision would succeed.

"He (Donovan) knows the issues and he knows the opposition," Evslin said, "No new facts are going to be brought up."

STOWE WOOLENS, LTD.,
Stowe, Vt., May 13, 1981.

Secretary RAYMOND J. DONOVAN,
U.S. Department of Labor,
200 Constitution Avenue, Washington, D.C.

DEAR SECRETARY DONOVAN: Please accept our commendation on your ruling revoking the homeworker regulations.

The homeworker regulations suffer from numerous defects, many of which were elicited during the hearings. They achieve little or no good and they can cause much harm, especially in rural areas such as Vermont.

Your ruling in no way diminishes workers' rights under the Fair Labor Standards Act. At the same time, it enables those who so desire, to avail themselves of the advantages of homework while remaining within the law.

Stowe Woolens looks forward to working with the Labor Department to insure compliance with the Act.

Your attention to this matter is deeply appreciated.

Sincerely,

DAVID E. PUTNAM, *President.*

PREPARED STATEMENT OF DAVID PUTNAM, STOWE WOOLENS, STOWE, VT., DEPARTMENT OF LABOR HEARINGS ON HOMEWORK, FEBRUARY 18, 1981

My name is David Putnam. I am president of Stowe Woolens, Ltd., Stowe, Vt. As we near the close of the Washington portion of the homeworker regulation hearings, I offer a few observations:

This whole process started for me at 9:30 the morning of March 7, 1980—almost 12 months ago—when Frederick Hadley, a Department of Labor compliance officer, came into my offices in Stowe.

Subsequent to his visit, many things have transpired: I learned the homeworker regulations prohibit people from knitting ski hats in their homes, notwithstanding the fact that homeknitters have been kitting ski hats in their homes throughout Vermont unmolested by the Department of Labor since at least 1959. I learned that the Federal factfinder, Mr. Hadley, suggested to some knitters that they cease selling to Stowe Woolens, that they form a cooperative and thus avoid the prohibition of the H.R. I soon learned of a 1961 Supreme Court decision which held to the contrary of Mr. Hadley's advice. I learned that the Department of Labor, through CETA and OJT funding and with the acquiescence of the Boston Department of Labor office, helped set up a company, just like mine, which buys finished knitted items from homeknitters.

Since Mr. Hadley's visit, I have been called all manner of things, including a tax evader, an exploiter, an underpayer and a fungus grower. I have been forced to watch my company, which is less than 2 years old, be crippled by the awkward timing of these hearings—during our busiest season—and because of the countless hours I have had to devote to the homeworker regulation problem.

Most troublesome is the discomfort this process has caused the knitters. Some in Bennington, are now without work. Others have had to disrupt their family routines and their own knitting to defend their profession at these hearings. In doing so, they too have exposed themselves to false, unsubstantiated and defamatory accusations of many things including tax evasion, ignorance and child abuse.

Meanwhile, we have watched the costs of this entire process pile up incalculably in the form of travel expenses, loss of production, lawyers hours and Department of Labor personnel hours.

True, the fiscal costs have been high. But they are far out stripped by the personal price that has been paid.

And for what has this steep price been paid? For a lengthy discussion of an outdated, anachronistic, discriminatory, vestigial Department of Labor rule which abridges personal freedoms, restrains free trade, prohibits an individual from working for more than one company and which today, could probably not withstand a constitutional challenge. But these are the negative aspects of this matter. What are the positive aspects. Are there any? Yes there are.

The Vermont knitters have been the very personification of courage. From the small towns of our State, they have come forward. Their courage in opening their lives to the harsh glare of the public spotlight, their courtesy in the face of misguided attacks by the opposition, their enterprise in funding all their expenses by selling the "Let Knitters Do It at Home" bumper stickers and their willingness to make substantial personal sacrifices to get their views across to you, the members of this panel, make me very proud to be associated with them and to be a citizen of the State of Vermont.

Another positive aspect is that this is not an insoluble problem. In fact, numerous solutions have been presented, some of these include:

Abide by the existing FLSA small business exemption of section 3(s). Expand the professional or artistic exemptions in 29 CFR, 541 to include homeknitting; reconcile the inherent definitional incompatibility and probable unconstitutional vagueness of section 3(g)'s "suffer or permit to work" and section 3(r)'s use of the word independent contractor; utilize the Supreme Court's test and those listed in the Department of Labor WH publication 1297 (rev) to recognize Vermont homeknitters as independent contractors under the FLSA; endorse an exemption for homeknitters, similar to the exemption contained in section 13(d) enacted by Congress in 1961 for homeworkers engaged in the making of "wreaths composed principally of natural holly, pine, cedar or other evergreens"; abolish 29 CFR 530.1(f) from the restrictions of 530.2 and allow the compliance requirements of FLSA 11(c) and 29 CFR 516.31—including the homeworker handbook—to apply to homeknitting; (this system is all that is required of all other cottage industries in the United States—why shouldn't it apply to homeknitting?) Then we could let individual States layer on additional laws if their particular situations so required. We could also try out such a solution specifically aimed at homeknitting in Vermont on an experimental basis for a finite period to see how it would work. Additional solutions have been suggested. Others will present themselves. So this too has been a positive aspect of this process. Solutions are available.

Another positive aspect is that we have heard expressed the legitimate concerns of responsible and concientious urban experts such as Dr. Tepper, Ms. Jordan and Joe Razo from the California Division of Labor Standards Enforcement. As the Washington Post pointed out, Mr. Razo and I come from two different worlds—but Mr. Razo's constructive openminedness makes it clear that a dialog between our worlds is eminantly possible. From this dialog, each with an appreciation for others legitimate concerns, I'm sure a solution can be evolved.

Another positive aspect has come from the International Ladies' Garment Workers' Union, AFL–CIO. We understand that two union members of a union factory in Vermont knit hats at home for one of our competitors to help make ends meet. We acknowledge their contribution to our industry.

We also appreciate the ILGWU's philosophy, as expressed by Paul Winslow in Montpelier before the House General and Miltary Affairs Committee that: "We are not opposed to allowing a change in the regulation 29 CFR to permit homework for handcrafted and handloomed items in the knitted outerwear industry . . . we agree with the homeknitters that they have a unique situation and we are able to agree to a resolution that . . . these craft persons ought to be allowed to work in their homes." With this kind of constructive understanding, again, I'm sure a solution can be discovered.

For this is our purpose today and the purpose of all this effort—to find a solution. Both sides have legitimate concerns and undeniable rights. But a viable solution to this situation is the ultimate goal. Hysterical hyperbole, inflamatory exaggeration, and polarization do not serve this end. Rational dialog does. Solution exist. We need only seek them out. Cottage industry once played an honorable part in America's heritage there's no reason why it can't again.

Let the progress we have initiated here continue so that we can return to Vermont to go about our chosen pursuits legally and in peace. Thank you.

PREPARED STATEMENT OF NANCY SMITH, WATERBURY, VT.

My name is Nancy Smith and I live in Waterbury, Vermont.

I knit in my home because I enjoy my job and also for very practical reasons: I can make my own working hours, work at my own speed and most of all I am home when my family needs me.

I have two children who are in grade school. Raising children is a huge responsibility. I feel fortunate to be home to help them reason out their problems, make decisions and most of all to share their joys and dreams. By working at home, I can volunteer my time and participate in their school activities. When they are sick I am there to take care of them and also do my work. How many jobs enable you to do both?

We live in a rural area, with no mass transportation. We can afford only one car and even if we did purchase a second car it would not be of any use to me as I do not have a driver's license. So I certainly would have to depend on riding to work with someone else. As it is now, I go to Stowe Woolens once a week with a fellow knitter. Think of the gas we are savings! If a situation arose such as a sick child I would not have to go to Stowe as they would see that I received the supplies I need.

I realize the "Wage Law" is in effect to protect people's rights. I am able to make my own decisions and I certainly will not allow anyone to take advantage of me.

I have the option of deciding how many hats I knit a week. We are under no pressure to knit more hats then we feel we can handle. If a particular hat is more complicated and involves more time to knit, we negotiate for a price increase. There is no need for the middle man.

I can knit four pattern hats in an hour. At $1.30 a hat that equals out to $5.20 an hour. I can knit three logo (or name hats) an hour at $2.00 a hat equals out to $6.00 an hour. Six striped hats at $.85 a hat equals out to $5.10 an hour. So you see I am making over minimum wage.

I am not compelled to knit just for Stowe Woolens. As an independent contractor I can knit for other buyers. I bought my knitting machine and I am responsible for keeping the machine in working order.

If forced to work in a factory for the minimum wage of $3.35 an hour, I feel I could not longer knit to help supplement the family income.

Example:

40 hours a week at $3.35 per hour	$135.000
Babysitter per week	45.000
Ride to and from work per week	10.00
Take home pay per week	79.000
Average hourly wage	1.975

I realize a ride to work, a babysitter and also a new wardrobe has no bearing on minimum wage, but they are a big factor to me.

I feel the "Wage Regulation" should be revised or abolished so the home knitters can stay in business. We are individuals who have the right to choose the type of job we want. We should not be discriminated against because of our choice.

It is my hope and desire that the Board of Labor will take into consideration the fact we live in a rural area, our personal reasons and how important our jobs are to our families.

PREPARED STATEMENT OF PEGGY YORK, WATERBURY, VT.

I could not find a job though I had been looking for some time. When I heard about knitting at home this seemed a wonderful answer to the problem of how to help out the family income. We only have one car which my husband has to have. There is no public transportation in Waterbury to get to a job. This means that one has to arrange a ride with someone or walk. We live a mile out of town. Walking in summer wouldn't be bad but at 30 below zero it would.

I am very satisfied working as an independent contractor. I enjoy making hats. It is by far the most convenient work I have ever had. I work my own hours; sometimes all day and some days not at all. I am at home as I feel a mother of four children should be. I can take care of my other responsibilities around my work. I drive to Stowe once a week to deliver my hats. Working in the home saves energy and since we are all supposed to be doing that I should think the government would encourage everyone who can work at home to do so. We are paid different prices for the hats we make and can negotiate for a higher price.

I have invested money in my knitting machine and various other equipment. I feel that I should be allowed to work in my home and make money with it. It would be a financial hardship on our family if I were forced to stop knitting. With high prices and inflation a second income is needed. I find it is by far the best to be able to work at home.

For the above stated reasons the regulation that does not permit home knitting should be changed.

PREPARED STATEMENT OF CHRISTINE BROWN, WATERBURY CENTER, VT.

My name is Christine Brown and I am a home knitter and have been for many years. I started knitting in the early 1960's with Moriarty's and for a period of time was their quality controller and shipper. I knit both hats and sweaters and can make from $4.00 to $6.00 per hour. A simple hat with or without stripes or a card hat takes 8 to 10 minutes, a logo about 20. One cannot say it takes a certain amount of time for a hat everytime as the machine will not always knit the way it should, as the weather affects those machines; there might be a knot that has to be removed, the phone might ring or the dog has to go out. I am my own boss and can stop and do these things and then return to the knitting.

We do not have public transportation and when I am working at home I do not have to pay for gasoline and spend hours driving to a job, (and one does not get paid for this travel time)—I can walk into my knitting room and start working and take a break when I want. In the winter we have bad roads most of the time and this takes more time and gas to drive to a job, if one was available.

I can make as many hats per week as I want to—it is my choice—I am not compelled to do a certain amount as in a factory. I own my own machines and have to keep them in working condition and pay for my own repairs. I am able to negotiate the price of every hat and sweater, the knitters all get together, and without a union and the cost of that.

It would be a hardship if I could not work at home as my husband is disabled and I can be home with him most of the time. Try living on a Social Security pension and you will see that the extra money I can earn working at home helps us to survive. I also have a medical problem that would keep me from the 8 to 5 job every day of the week.

I think the regulation should be changed so that we can work in our homes if we so choose. I don't think the Dept. of Labor or any other dept. in the government should have the right to tell us what we can or cannot do in our homes, or that we can not earn money in a certain way. We make a good product and are proud of it and want to be allowed to continue working in our homes if we so choose.

THE REEMERGENCE OF SWEATSHOPS AND THE ENFORCEMENT OF WAGE AND HOUR STANDARDS

MONDAY, JUNE 29, 1981

House of Representatives,
Subcommittee on Labor Standards,
Committee on Education and Labor
Los Angeles, Calif.

The subcommittee met, pursuant to call, at 9:40 a.m., in the Customs Courtroom, Federal Building, Los Angeles, Calif., Hon. George Miller (chairman of the subcommittee) presiding.

Staff present: Michael L. Goldberg, chief counsel; and John Lawrence, staff director.

Mr. **Miller**. We will bring the meeting to order at this point.

The purpose of this investigation is to hear testimony on Secretary of Labor Raymond Donovan's proposal to eliminate the 40-year-old prohibition on industrial homework in the garment trades. I also want to focus on the resurgence of sweatshops in the garment industry.

The Secretary's proposal to eliminate the homework ban stunned the business community, labor leaders, and government officials who are responsible for the enforcement of labor standards laws. Among enforcement experts there was broad agreement that eliminating the ban, together with the Reagan administration's substantial cuts in the enforcement staff of the Employment Standards Administration, would make it nearly impossible to protect the legal rights of garment workers.

The response in Congress has been overwhelmingly against the Secretary's action. Late last week, I delivered to Secretary Donovan a letter, signed by over 140 of my colleagues in the House, urging him to rescind his ill-advised proposal.

My subcommittee held a hearing on the proposed lifting of the homework ban on May 19 in Washington. Each witness agreed that elimination of the homework ban would impede enforcement of the law; undermine legitimate manufacturers; assure the proliferation of sweatshops and other substandard working conditions; cheat the Government out of hundreds of millions of dollars in lost taxes, social security and workers 'compensation payments, and welfare.

These were the unanimous conclusions of industry, labor, consumers and enforcement experts alike.

I would like this morning to continue the focus of these hearings, to gather evidence, to study the expected impact, if in fact the Secretary should follow through on his proposals to lift the ban on homework.

While I am sure that other issues will arise, I think it is very important that all of those testifying understand that the comment period by which the regulation will bring about a lifting of the ban will run out on July 4. It is my intent to make the evidence gathered here today available to the Secretary of Labor for the purposes of hopefully persuading him that his proposed actions are ill advised, and not in the best interests of its workers within the garment industry or the manufacturers, or the garment industry generally in this country.

That is the main focus of these hearings.

I would like now to welcome the Honorable Joseph Montoya. Senator Montoya has been a leader in the fight to protect workers within the garment industry in our State of California.

Senator Montoya, welcome to the committee. Before you proceed, if I just might, sitting on my left will be Mike Goldberg, who is chief counsel to the Subcommittee on Labor Standards, and on my right is John Lawrence, who is the staff director of the subcommittee.

Senator Montoya, welcome.

STATEMENT OF HON. JOSEPH MONTOYA, SENATOR, CALIFORNIA STATE SENATE

Mr. MONTOYA. Thank you, Mr. Chairman.

It is a pleasure for me to be here testifying before you as you requested on your subcommittee of the Committee on Education and Labor, relating to labor standards, and relating specifically to the lifting of the industry homework regulations. We have had a long history of involvement, as you have mentioned, here in California on this issue. It affects the emerging minorities in this State, specifically Hispanics and Asians. Just to document our most recent involvement, on January 13 of this year we sent a letter to Mr. Henry White, Deputy Administrator of the Wage and House Division of the Department of Labor in Washington, D.C., outlining why we thought it would be catastrophic to lift the regulations.

We have also met recently with 40 other people who have been involved with us over the period of the last 2 years, to help us enact Senate bill 545, which becomes effective on July 1, and which relates to the garment industry.

We met with the Secretary of Labor on May 28 and articulated the same concerns that we bring to you today regarding the lifting of that ban on industrial homework.

Last, but not least, on last Thursday, we passed Senate Joint Resolution 22 in the senate, memorializing the President and the Congress to oppose the repeal of the industrial homework law. We are hoping that sometime this morning the assembly is in the process of doing the same thing.

As it relates specifically to industrial homework, and our historical involvement, back in 1975 we were involved with the International Ladies Garment Workers Union in the passage of a much more stringent industrial homework law, which does not allow for any certification or exemption relating to industrial homework.

In California I think where there have been some specific considerations relating to the handicapped, relating to senior citizens, relating to some extent to the kind of situation that arose in Vermont, little old ladies knitting skicaps and sweaters in Vermont, I think that the department of industrial relations has dealt with it with some sensitivity by just ignoring these kinds of problems that are not really problems.

Most recently we passed Senate bill 545 which becomes effective on July 1. So we have demonstrated I think in the California Legislature our concern and our public interest in California.

There is no question, and it is important for you to note, and to take back the information to the rest of the Congress, the fact that the garment industry which is just one of seven industries that would be affected by the lifting of this ban—we are talking about a $3½ billion wholesale industry in California. Two-thirds of that industry is in southern California. We are talking about wholesale dollars. We are talking about its effect upon about 3,000 manufacturers. We are talking about 8,000 to 9,000 contractors or jobbers, and we are talking about 150,000 workers.

Though industrial homework is illegal, it still exists. There are some people who indicate that we might be talking about as many as 40,000 or 50,000 people doing work in their homes.

Therefore, the removal of this regulation which restricts the employment of the home workers in these industries and especially in the garment industry because of the figures that I have related to you would have an adverse impact in our opinion and in the opinion of those who will come and testify before you also, who we have worked with for the last 2½ years, and who are representative of every segment of the industry that I have just mentioned.

The removal of this ban would in fact be a great leap backward.

There is no question that we are talking about an impact on more than a hundred million dollars. Specifically, it would have an impact on the minimum wage, and that is one of the considerations.

In many shops some workers collect only minimum wage now, or even less. What might we expect from attempts to monitor homework in 30,000 or 40,000 additional homes?

As I mentioned, here in California we have made a commitment. There are approximately 60 to 70 people in the department of industrial relations who are in charge of doing the job relating to the garment industry. I don't think that our troops can be spread out any thinner. We cannot spread them out any thinner. It is questionable in some regard whether in fact we have enough people, and we are looking at the idea of perhaps getting some more in the future. What we would like to know is how many people do the Feds now have, and what might the people expect from significant budgetary cuts in every department of Government under this administration.

It unquestionably takes a commitment of people and resources to do the job.

Congressman, we ask you, the other Members of Congress, to help us protect what we have fought so hard to establish here in California.

I don't think that there is any question that it would also have an impact on small businesses.

I don't remember the specific numbers as to how many of these jobbers and contractors—many of them ethnics—there are. But a majority of them are in fact small businesses.

We hope to have a better picture for you in the near future when in fact our registration aspect of our lobby becomes effective. But right now we don't have a specific picture. But there is no question a significant number of the people involved in this industry are small businesses.

It is important again to bring to your attention the fact that we think that both in the industrial homework law that we have and in S.B. 545 we have brought together all of the diverse interests that make up this important industry in California.

I wanted to be here today, not for long testimony, or a long speech, but just to indicate to you the commitment of the California State Legislature in regard to industrial homework, in regard to these specific regulations. We hope that you will take back that information. We really believe that to do the job adequately will require some additional enlightenment, some additional information to be taken by our Secretary of Labor. I think it will require a bipartisan effort. I don't think there is any question that we made an impact on the Secretary when he was out here. I think that by constant attention upon the issue, by these hearings, we may in fact put those regulations back into place, as well they should be.

I thank you for the opportunity. That concludes my testimony.

Mr. MILLER. Thank you.

You indicated that you expect the assembly to respond today to the Senate joint resolution?

Mr. MONTOYA. Yes.

Mr. MILLER. You expect it to pass I assume.

Mr. MONTOYA. Absolutely.

Mr. MILLER. I don't want to keep you too long, Senator, but I find it somewhat inconsistent that at the Federal level we are here considering that we are going to lift the ban on homework, on the theory that it is in fact not a problem in terms of the exploitation of individuals within the industry, and second, for those individuals who might be exploited, that it would make enforcement easier because as the Secretary's representative suggested, they would simply pick up the phone and call in and say they are being exploited. While at the same time, in California, where the garment industry is a substantial factor in the economy, the legislature has decided to move in just the opposite direction—not only to maintain the homework ban, but to try to strengthen the means by which it can be enforced.

I just wondered if you might tell us what conditions Senate bill 545 was designed to respond to. Because apparently at the Federal level we are oblivious to the conditions that might exist that would demonstrate the need to continue a ban on homework.

Mr. MONTOYA. Well, Senate bill 545 was something that came as a consequence of the industry trying to do something on its own, and coming to the realization that you cannot depend upon private and individual good will, that there must be some blessing, some sanction on the part of the State that singular efforts or nonbinding, nonlegal efforts would not work.

The problem that I find in the Secretary's and other administration statements about it would be easier for people to report any violations in the privacy of their own home is at best a statement of total political naivete. I don't want to attribute bad motives to the Secretary. Certainly in the discussions that we held he seemed to be serious about doing something.

But I think that everyone knows that working people out there are afforded the best protection by working in a work place where the laws of the State and the Federal Government are clearly placed before them, where they can be observed every day, where they can question about it. Who knows what might go on in the privacy of someone's home. I don't think there is any question that given the language barrier that many of these workers face that it certainly would not lead to better enforcement or questions relating to violations of minimum wage.

Not only that, I think it is important from the standpoint of the protection, if you will, the blessing of the State, that small business people who have worked with us over the course of the last 2½ years by paying the local fees to the counties, to the cities that they operate in, are in fact entitled to some protection, that they are not the only ones who are going to pay taxes on behalf of the employees that work for them, but that other people are going to also.

And certainly that is one of the things that could not be done in my opinion if we were to allow industrial homework.

Mr. **Miller**. I assume that Senate bill 545 was a bill that was arrived at with the general consensus of the entire industry, with labor, and with the contractors. I am not suggesting there wasn't some opposition—but manufacturers across the board apparently recognized that this was the proper way to go.

Again I am trying to draw the distinctions, because we are being led to believe otherwise. In the testimony by the Department of Labor, the suggestion was made that we ought to go in exactly the opposite direction, that removal of the law will make things better. Yet, Senate bill 545 which seemingly disputes that conclusion was arrived at based on a consensus within the industry.

Mr. **Montoya**. Over a long period of time, there was initially a lot of mistrust, and probably justifiably so. I don't believe that the ILGWU would see maybe the Coalition of Apparel Industries has their interests at heart. But it is a matter of record over a period of 2½ years we saw that a political compromise could be reached that worked to the best interests of the industry.

I don't want to represent here today that there isn't out there somewhere kind of a rearguard action going on right now on the part of some manufacturers of some interest that believe that the best way to continue the exploitation that has gone on in the past is achieved best by no law.

So we do not expect that even though we have got a consensus measure, that there are not some interests out there being formulated right now attempting to repeal or put an injunction forth on our legislation or to do whatever to allow the exploitation that has gone on in some segments.

As a matter of fact, I think just recently there was some communication with the Governor's office on the part of some Chinese characters in San Francisco who indicated that they had never been a part of the action, that they didn't think the minimum wage laws were necessary, and that it was best if we operate in a totally laisse faire attitude.

I don't know where these people were hiding when we went to San Francisco for our hearing in San Francisco. We had a journalist who made translations in Chinese. We had a professor from the University of California. It took a lot of prodding to bring out some of our Chinese manufacturers.

So again, as consensus of a bill as ours might be, I am sure there will be some people coming out of the woodwork who prefer nothing at all. But generally it is a consensus measure.

Mr. MILLER. When you find them, we will be interested in talking to them, because we can't find anybody on the other side of this issue, as much as we have scoured the country.

Thank you very much for taking the time to testify this morning and for your leadership in this issue.

Thank you again.

Mr. MONTOYA. Thank you very much. We hope to have the resolution from the assembly before the day is over.

Mr. MILLER. Yes, we would appreciate that. As I said, we are up against some time problems with regard to the comment period.

[Information included for the record:]

Senate
California Legislature

JOSEPH B. MONTOYA
STATE SENATOR
[illegible] SENATE DISTRICT

May 15, 1981

The Honorable George Miller
House of Representatives
2422 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear ~~Congressman Miller~~ George:

Earlier this year, I submitted testimony to the Wage and Hour Division of the Department of Labor. That Department now clearly recognizes the degree of labor exploitation in the garment industry, and judging from Secretary Donovan's well publicized "raids" in New York and Chicago, seems to want to do something.

Negating these "raids," however, is the absolute reduction in enforcement personnel within the Department and the proposal to authorize "industrial homework." The direct correlation between industrial homework and sweatshops is patently clear.

Industrial homework creates an underground economy that deprives government of its fair share of taxes and creates additional costs to legitimate business people.

I have enclosed a copy of my testimony to the Wage and Hour Division.

I earnestly request that every effort be made to avoid the chaos inherent in industrial homework schemes.

Sincerely,

JOSEPH B. MONTOYA

JBM:rmh

cc Mr. Raymond Donovan, Secretary of Labor
Mr. Henry T. White, Jr., Deputy Administrator

January 13, 1981

Mr. Henry T. White, Jr.
Deputy Administrator
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. White:

The use of homeworkers continues to undermine legitimate entrepreneurs, creates an unfair tax burden for the general public and denies to many workers the fruits of their labor. The existing Regulations 29 CFR, Part 530, must not only be kept, but they must be strengthened to reflect more adequately the current status of industrial homework. The exploitation of the powerless is recurrent in every generation. It demands vigilance and diligence from those of us charged with pursuing the general good.

I am Senator Joseph B. Montoya, an eight-year veteran of the California Legislature. As the author of an industrial homework law, a contractors licensing law, and a garment manufacturing law in California, I wish to share with the Wage and Hour Division of the Department of Labor recent experiences in California.

An overriding salient point of this experience is that the labor force in California is well educated, highly technical and productive according to most surveys by major banks.

Industrial homework creates an underground economy that deprives government of its fair share of taxes and means an unfair incremental cost to legitimate business people. It allows one party to both create lower fixed costs of operation and concurrently forces competitors to pay higher costs. Like a virus, once it begins, it is hard to bring under control and eradicate. The results are clear.

The apparel industry in California is the leading manufacturer of ladies wear. At wholesale prices, it is a $3 billion a year industry. It is also an industry that generally has denied to the laborers the fruits of their labor. A direct relationship exists to the wide spread use of illicit industrial homeworkers and the minimum wage. Ongoing surveys reveal that many shop operators violate the minimum wage law. They contend that they must because of the fiscal advantage enjoyed by persons using industrial homeworkers.

Beginning in 1978, California established a task force to look into the garment industry. The first years documentation is staggering. Almost ten percent of the firms were found to be using industrial homeworkers.

Shop operators operating in such unfair market conditions reacted by violating the minimum wage standards. Over 90 percent of the inspected firms denied workers the proper wage. To compete against industrial homeworkers, required even additional exploitation of workers. Record keeping requirements, overtime hours, Social Security, Unemployment Insurance, Disability Insurance, and the Workmens Compensation fund were also ignored. Again, over 90 percent of the inspected firms denied their workers proper compensation.

The brutalization of the industry -both workers and managers, by the existence of competing industrial homeworkers- is unending and unfair to those, and there are some, who wish to comply with the law.

To keep a competitive edge, every dollar had to be saved. Upkeep of drinking water facilities or toilets becomes a luxury to managers in such an environment. The deterioration of sanitary conditions in shops became a public scandal in Los Angeles.

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A clear and present danger to the health of workers and to the public at large was created. Child labor, thought to be an ancient relic of early industrialization returned as a significant practice.

Only limited progress has been made since these first reports were published. Our new law is scheduled to go into effect on July 1 of this year. Our state efforts, however, will come to naught if industrial homework is sanctioned. We have seen the direct assault on the minimum wage inherent in industrial homework schemes.

Perhaps the single clearest indicator of the relationship of wages to industrial homework is that the average hourly earnings of workers in our apparel industry are only half that of other nonagricultural industries in California.

There is another measure of how industrial homework is undermining our economy and society and becoming synonymous with exploitation and poverty. Three TV programs were produced last year in which industrial homework in the garment industry was depicted. One was the nationally broadcasted "60 Minutes." But similar scenes were depicted on movies for TV.

Industrial homework, however, is not confined to traditional industries. Evidence exists that even the highly skilled technical field of electronics and minicircuitry is being affected.

If such an advanced technological field uses industrial homework, then the major growth field in California manufacturing is pulling away from its contribution to the public good. The loss to Social Security, Workmens Compensation, and minimum wages is fatal to the well-being of all workers.

To retreat from the promise and hope of a meaningful and protected minimum wage is unconscionable. Employees, business persons and government itself require a commitment, a reaffirmation that order will prevail, and those who seek to comply are protected.

Industrial homework is chaotic and creates chaos throughout our people, economy and society.

Sincerely,
Original signed by:
Joseph B. Montoya
JOSEPH B. MONTOYA

JBM:rmh

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Mr. **Miller**. Next we will hear from Merle Linda Wolin, a reporter from the Los Angeles Herald-Examiner.

Welcome to the committee. Please feel free to proceed in any manner in which you would like. If you have a formal statement, it will be entered into the record in its entirety. You may summarize it if you wish. However you would like to proceed.

STATEMENT OF MERLE LINDA WOLIN, REPORTER, AND MARY ANNE DOLAN, MANAGING EDITOR, THE LOS ANGELES HERALD-EXAMINER

Miss **Wolin**. I would like to first introduce Mary Anne Dolan, the managing editor of the Los Angeles Herald-Examiner. She served as my editor on the project that I completed last year, and which ran into the beginning of this year, which was an 8-month investigation which resulted in a 16-part series about the California garment industry.

What I would like to do this morning is read to you from the statement that I prepared for the committee, tell you a little bit about the response to the series, and then let you ask questions.

A year ago last spring as a reporter for the Los Angeles Herald-Examiner, I posed as an illegal alien and went to work in the city's garment industry.

For 5 full weeks I lived a typical garment worker's life. Like many of the others—an estimated 125,000 in the Los Angeles area—I earned less than minimum wage, endured unsanitary, often dangerous working conditions, and saw many of my fellow workers toil commercially at home at what is known as industrial homework.

Since today's hearings are focused on this homework and the possible effects of legalizing it under the regulations of the Federal wage and hour laws, I want to report to you what I saw myself and what I was told by other workers who regularly engage in homework.

Please remember I am a journalist. I report. I describe what I see. I am not an expert who has studied the ramifications of this type of employment nor someone who can tell you authoritatively whether it should be legalized.

In the course of my 8-month investigation of the California garment industry, I walked the streets of Los Angeles looking for industrial homework. I found it everywhere. In some sections of the city, especially in poor, Spanish-speaking neighborhoods in central and south central Los Angeles, I found it on virtually every block.

After 9 days on the streets looking for homework, I had spoken with nearly 100 homeworkers. Everyone—and I want to emphasize everyone—told me they worked at home because they did not earn enough money to work in a factory. They said the low wages paid in La Costura, the Spanish term for the garment industry, did not permit them to pay for either child care or for bus transportation, 65 cents each way, to get to work elsewhere.

Most workers said they earned an average of $15 per day. Some of the workers earned $10 a day.

They said by saving the $1.40 round-trip bus fare to work, they often had more money for food or for important incidentals. They said they had to make their money stretch for the essentials.

Homeworkers told me they worked long hours, sometimes as many as 16 hours a day, to compensate for the low wages.

Many said they began their jobs as sewing machine operators in factories but soon the shopowner—in every case a contractor to a larger manufacturer—asked them to work at home. They said they believed working at home was cheaper for the owner.

Many said the owner had loaned them their industrial machine and regularly delivered and picked up the sewing work.

The workers I met said they knew full well that homework and below minimum wages were illegal in the United States. They said, however, they were not about to complain. Like me, in my undercover disguise of Merlina de Novais, they said they were in this country without papers and feared deportation.

Time and again, as Merlina, homeworkers told me to be quiet about my real identity to avoid problems with immigration or with labor officials.

"Hay que aguantar," they advised, "We have to put up with this," referring to the low wages and the intrusion of commercial work into their homes. They also said "algo es algo," "something is something," which implied it was better to earn something at home under miserable conditions than nothing at all.

The homework I witnessed was often being done in back garages, converted living rooms, small bedrooms. Huge industrial sewing machines looked very out of place in otherwise homey surroundings. Children, often three or four, played amidst the electrical wiring and huge piles of cloth. Or sometimes they slept on a nearby bed piled high with blouses or skirts while their mother or maybe their mother and their aunt worked at the machines. I saw empty plates of food on or near the machines.

Los Angeles County Health Department officials later explained to me how different kinds of vermin, particularly rodents and cockroaches, easily breed in this kind of crowded, dirty environment. Many of the workers said they did not like working under such crowded conditions and said they were sometimes afraid for the children who played near the machines.

Much of the work I saw was brought home by workers who worked in sewing shops during the day and then brought in the homework as a way of supplementing their wages. Early in my investigation, in the shops where I had worked, I often saw workers leave with unfinished garments stuffed into large black or green plastic garbage bags, presumably to be sewed at home later.

None of the homeworkers I met said any labor officials had ever inspected their homes, or to their knowledge, confiscated the goods from the contractors or manufacturers who regularly gave them work. They were not afraid of getting caught nor did they realize the homework ban was enforced.

Many homeworkers complained to me about being isolated from other workers. In many cases, they said they were depressed and would prefer to work in a good factory.

Some workers viewed homework as a kind of punishment for being poor and illegal. They felt trapped at home, caught between their duties as mother and wife and the economic pressures to contribute to the family's earnings.

Many said life in the United States was not what they expected. In their homelands—most came from Mexico, El Salvador, and Gautamala—they said they thought everyone in this country earned a living wage. Now they said they know that is not true.

The homeworkers I met—as long as they earned less than minimum wage—did not see any way out of the predicament of working at home. Some said this was their cross in life to bear. But if Merlina was afraid of immigration and determined to work at home, then they wished me well and encouraged me to trust in God and pray.

When the series in the Herald-Examiner began—I want to state first that we published this series called "Sweatshop, Undercover in the Garment Industry" nearly simultaneously with the Spanish language publication in Los Angeles called La Opinion. That reaches a paid circulation of 50,000. They think there is a pass-on rate of like 5. So it is another 250,000 people. Many of those people, if not every one of them, works in the garment industry. Many of them readers who pick up La Opinion everyday.

Also there is a very large Spanish language radio station here, KLVE. Jaime Jarrin read the series everyday on the air as it came out. It was like a Zane Grey novel. That radio I know from my own experience is piped into the shops—that station. They also gave a summary everyday on one of the local Spanish language television stations, so it got tremendous coverage amongst Latinos in Los Angeles.

So I think their response gives us a good gauge of how people themselves reacted to the series.

La Opinion sold out most everyday that they published the series. They and the Herald-Examiner received hundreds, literally hundreds and hundreds of phone calls. Most of the messages that I got from La Opinion and those who could leave a message in English at the Herald-Examiner for me, the message that I got repeatedly was simply "God bless you." Some left a message, "Thank God for giving you the intelligence to do this." Wherever I went in Los Angeles and met Spanish-speaking people, they always told me what was reported in the series was typical of their daily life, that the work experience I described in fact was true. They were all making below minimum wage, whether they worked at home or worked in the factories. They worked under crowded, unsafe conditions. Homework for many of them is not something that they choose.

An example also I think of the kind of response and how important this series was to many of these people in the shops is that one day Jaime Jarrin when he was reading the series on the air, he was ill, and he forgot to tell his replacement to read it. I understand they read it every morning at 11 o'clock. Comes 11 o'clock there is no series. Their switchboard was jammed with calls from workers in the garment industry who wanted to know where the next installment of Merlina's life in the shops was. It was very important to them, because it was the first time that they saw anyone in what they considered to be America or the traditional media take up what for them is daily reality. I think that gives you a sort of good picture of how people on the streets, how these homeworkers, live.

If you have any questions, please feel free to ask.

Mr. **Miller**. You indicated in the first part of your statement many of these individuals were in fact working at home because they did not earn enough money to work in a factory. Do you mean if they had chosen to work in a factory, that they would not have earned enough money to make up the difference for them?

Miss **Wolin**. It is sort of a catch-22 situation. They didn't make enough money doing homework to pay for their bus fare to go to a factory. So they felt because they earned so little money they could not work in a factory, they had to work at home.

Mr. **Miller**. But if they had worked in a factory, would they have earned enough money for them to make a logical decision it would have been better, or are you talking about some instances where if they worked in the factory they still would not have earned a living wage?

Miss **Wolin**. Some of them had worked in factories and didn't make enough money in factories either. So they felt neither at home nor the factory would they make enough money to pay for child care or for the bus fare basically.

We are talking about so little money paid in this industry to the majority of workers, that they literally do not have enough money to—many of them do not have enough money to leave their home to go to the factory. Let's say some of them, the more experienced ones, did have—made enough money in a factory. Both people who work in factories and those who work at home feel they don't make enough money to cover their basic expenses needed to work.

Mr. **Miller**. The reason I ask that is there is some suggestion by proponents of the lifting of the homework rule that there is a bootstrapping, that this is the first rung on the ladder, and if you work at home you will be able to work your way up. Although you have stated that "something is something," you are suggesting that the proponents suggestions are not the case at all, because the pay is so miserable, that it is a hand-to-mouth existence for the individual in that family, and it is in fact not the American image of getting a start in the American economic system.

Miss **Wolin**. The reality is just what you describe, that in fact it is not very much of a start. But they do have this feeling of hope, that it is better to work under these conditions than to not be working at all. They need some money for their food.

Mr. **Miller**. Granted. I understand that. But in a sense of whether the hope is realistic or not, for a person who is working at home, and making $10 a day, and has a child, you are going to consume that day's work each day in trying to provide food and rent. That will consume that day's work. So you may have hope that you will end up in another economic place at the end of the year, but you are going to end up being poor and working at home, just where you started out.

Miss **Wolin**. Right. And bitter. And sometimes maybe later on angry.

Mr. **Miller**. That is understandable.

Let me ask you also. You allude to the fact that in some cases people who were working in factories were also bringing work home. I assume that that was for the purpose of supplementing wages that they were earning in their work in the factories, is that correct?

Miss **Wolin**. I think we can all safely presume that that is how it is done. I know that I recently spoke with a group of workers up north in San Francisco. These workers told me that in fact they bring work home to supplement the wages in the shops. Those that I actually witnessed where I saw workers leave the shops with bags of unfinished garments, I can only assume that they got paid extra for that work. But I don't have any proof that they got paid more, or that they completed the work.

Mr. **Miller**. In some instances were they bringing work home for other members of the family?

Miss **Wolin**. It is very possible. Sometimes there will be a grandmother, an aunt, who takes care of the children while they are at the factory. It is very possible that they bring work home in the afternoon, and then while they might be preparing dinner, someone else is working on the garments.

Mr. **Miller**. How many workers did you meet who were working at home who were making the minimum wage?

Miss **Wolin**. I never met one. I swear to you. I never met one who was working at home that made the minimum wage.

Mr. **Miller**. So would you draw a substantial distinction between that and workers working in the factories?

Miss **Wolin**. There were workers in the factories, experienced sewers, who did make the minimum wage, by working long hours. In the garment industry they are not paid on an hourly basis. And I never ran into anyone who paid makeup pay, which is guaranteed to workers if they don't make minimum wage on the piece rate.

But there were many workers in the shops where I worked who did not make minimum wage. Now they might have made more money than the home workers. But I don't think that it was a substantial amount more.

Mr. **Miller**. Of the workers that you met and talked to, what percentage were undocumented aliens?

Miss **Wolin**. Again, in the course of my investigation, especially those nearly 2 weeks that I spent walking the streets, I don't believe that even 5 percent of them were legal. Most of them were here illegal; many of them had been in this country for as long as 20 years illegally. They were not working at home—some of those who had been here 20 years were not working at home because they feared deportation as much as they had children and they could not leave, they could not work in factories. So this was a way of making a little bit of money doing it at home, and still taking care of their children.

But newly arrived immigrants, the Spanish-speaking ones that I spoke with, and also the Asian ones that I could see or I could hear the machines going inside their homes, behind closed drapes, or shutters, many of them I believe do work at home because they fear deportation. That was my story.

I said I want to find work on this block, I understand that someone on the block is giving out—is working at home, and might have need for a helper. They would say, "Why do you want to work at home?" I would say, "Because I am not in the country legally. I am afraid of immigration." They didn't seem to think that would be so strange. They said, "Oh, we understand, go to this garage behind that house, the third house from the corner, and I think that woman has enough to share."

Mr. **Miller**. Did you get any indication from your experience during that 2 weeks that if one of these individuals determined that they were being exploited, that they would call up the Department of Labor and say they are being exploited on wages and hours?

Miss **Wolin**. Well, it is not that these people were determined they were being exploited. They know they are being exploited. They just figure there is not much they can do about it.

Mr. **Miller**. You understand this whole process started in the rural pastoral setting of Vermont, where people just wanted to work by their hearth in the wintertime.

Miss **Wolin**. That is not the case in Los Angeles.

Mr. **Miller**. If the Vermont workers were exploited, they would make that determination and would choose to call the Labor Department. That is not the case in urban Los Angeles?

Miss **Wolin**. Based on my experience, which I think is considerable, that is not going on here. No one is choosing to work by their hearth in Los Angeles.

Mr. **Miller**. What do you think the impact is on the children. in these families? If you were to compare them to children within the same community whose parents were employed in a regular course of employment, 9 to 5, and not those concerns, what would you find?

Miss **Wolin**. Probably to their advantage is the fact that they get to spend the entire day with their mothers. To their disadvantage is that they are playing and living amongst this industrial setting that really looks like it has no place in their home. That these machines are very large, they require I think a drain on the electrical power of the home that exceeds that which most home appliances use. The mothers themselves told me that they don't like their children playing on the floor amidst the wiring or even amidst the piles of unfinished garments. That it is not exactly a conducive environment for children's play. This is all the children have ever known. So to them, they find it perfectly normal.

Mr. **Miller**. Are older children involved in the work?

Miss **Wolin**. I never saw older children actually at the machines. But I did, even in one of the shops where I worked, I saw younger children given a pair of scissors to trim, to trim the threads. So, though I myself did not see younger children trimming, it wouldn't surprise me at all that they could sit down or they were told to sit down and help out and trim the threads.

Mr. **Miller**. In this time that the child gets to spend with his or her mother, given the reimbursement rate for the work, did you get any indication that the mother would take time to go outside with the child or during the working day—or is it just that they are in the same room?

Miss **Wolin**. They are in the same room. What I could see, they are in the same room. Usually the homeworker feels pressured to work every hour available to get the job done, because every hour you miss, you are missing this very needy pay.

Mr. Miller. How many hours?

Miss Wolin. Sometimes they told me they would get up at 7 in the morning, or start working at 7 in the morning and except for the time that they took to fix their children's meals, they stayed at the machine. If their husbands came back around dinnertime, they took out for dinner. But they said they often would work until 10 or 11 at night.

So we are talking about a very long day at the machine.

This is when there is work, also.

When I talked to homeworkers, there was a noticeable slump in the garment industry. Many of them said that contractors had not delivered work to them in the last week or the last 2 weeks. So they were paying rent—that was the other thing—many of them were paying rent on industrial machines out of the money that they made. It was not an expense that was picked up by the contractor or by the manufacturer who contracted with the sewing-shop owner, who then hired the homeworker.

Does that make sense?

Mr. Miller. Yes; it makes a lot of sense.

Miss Wolin. So they had that additional expense. They were very nervous, because as long as there wasn't work, they still had to keep paying the rent on the machine.

Mr. Miller. Which would further preclude their ability to get ahead economically, so that they could make a different choice about the kind of work they seek to engage in.

Miss Wolin. Most of these people are not getting ahead economically. They are working like crazy, and not getting ahead economically. Frankly, they don't see a way out of it, except to return to their homelands, and many of them do. I believe that has been well documented, that many of these workers that come from Mexico or Central America, after 1 year, 2-year period, sometimes even less, they are rather fed up with the working conditions in this country, and they do go back.

Now, some of them, by pooling incomes, or having a whole family live together and pool their earnings, they are able to get ahead, and this is indeed the first step—this is their entry level job into the United States, and they do go on and do much better economically. Many of them do not.

Mr. Miller. Mr. Goldberg.

Mr. Goldberg. You suggested in your statement that a number of people who do homework are doing it because they don't earn enough in their jobs in the garment factories, and so they are supplementing their income. Generally, people who don't understand the industry and the homework problem view it as an alternative, rather than as a supplement. In your experience, how many people were doing homework to the exclusion of going into the factory and working, and how many were doing it to supplement their earnings in the factory?

Miss Wolin. The 9 days that I spent walking the streets of Los Angeles, I spoke with people who were doing homework primarily, who were not working in factories. And I would say in the course of those 9 days, working from early in the morning until late afternoon. I spoke with more than 100 or nearly 100, somewhere around there, people that were doing this primarily.

Now, I worked in three factories. Two of the factories where I worked I actually witnessed workers taking these garbage bags full of unfinished garments home with them. I would say that maybe I saw four or five workers daily take garments home with them. I presume to supplement their wages. These shops are small. Also the shops where I worked there was about an average of 25—in the 2 shops I worked in, there was an average of 25 workers. So I didn't see everyone do it, but a number of people did it regularly.

Mr. Goldberg. Thank you.

The shops that you worked in, where were they located? Were they located in industrial buildings or in loft buildings?

Miss Wolin. Let's see. Two of the shops were in industrial buildings, loft-type buildings, in downtown Los Angeles. One I worked in was—I don't exactly know what it was zoned for. It looked like it could have been the back of what once was a home. But it was not a home. It was definitely a small factory. Most of these places from the outside you would never have known there was sewing going on inside. They were completely boarded up, grates on the windows, grates on the doors. We were locked in.

Mr. Goldberg. You were locked in?

Miss Wolin. Yes; now the owner later said that we were locked in because he was afraid that the winos who were in the area would come into the shop and because of the hum of the machines no one would hear them. Though the workers told me we were locked in to keep immigration out.

Miss Dolan. I think it is important to say one thing in addition. Your questions to Merle so far have primarily led to her describing over and over again the catch 22, and her trying to decide for you or extend some sort of belief to you whether or not the conditions are in fact worse where the workers are working in a home working situation or in the factories. I think that is hard for her to say, because the one thing that we did learn through this investigation, which we have since spoken to Secretary Donovan about when he came to see us on his last trip to Los Angeles, was that yes, it is commendable that you are here, Congressman, talking about the issue of homework, that has brought up the issue of homework.

But there is a great deal more to be looked at in the entire garment industry. And that includes taking a fresh look at what the conditions actually are in the factories themselves once the issue of homework has been dealt with.

Mr. Miller. I couldn't agree with you more. That is why we wanted the Secretary to come testify, because I have a little bit of a problem understanding how we are going to deal with the abuses in the factory if you have cut the enforcement agency in Los Angeles by 15 percent, while at the same time expanding the availability of homework under these kinds of conditions. I want to know where you are going to put your enforcement personnel. So far the Secretary of Labor's only response has been that these people will call on the phone, so that will make enforcement very easy, plus it won't be against the law, so they will only have to tell the Department when they are being abused in terms of wages, hours, and working conditions.

I am not satisfied with that answer. It think it is very clear that the industry has a long history of people coming in and out of the industry, and exploiting various people each time.

But I find it hard to believe that the Department could be serious about directing enforcement efforts at the industry while it is going to set in motion a policy that would allow for the proliferation of the situation you have described in the home. That is really the overriding concern. Because we made those cuts in the budget on Friday. They have not yet been able, to satisfy me or other members of the committee on how these resources that are now spread so thin are going to be able to compensate for the lifting of the ban.

But we are not here to pretend that one side has all clean hands and the other side the hands are totally dirty. Not at all. But it is far beyond my comprehension how you are going to achieve this stated purpose—especially when the Secretary suggests that he wants to step up enforcement, and has gotten agreement out of the industry to do so, and believes that this in fact should be done—when there is no bottom line on how you are going to achieve it.

We are back in the sort of self-policing within the industry, self-policing within the workers. That doesn't add up to me—as was said earlier by Senator Montoya—relying on the good will of people who have the history of exploiting their fellow human beings.

Miss **Wolin**. Most of the workers in this industry, statewide in California, are recently arrived immigrants who are unfamiliar with the laws here. They don't know about labor standards enforcement. It is highly unlikely that they would be calling the Labor Department to complain. They don't know that there is anything to complain about, or that anyone would do anything if they complained.

I am largely speaking—I am including in that people who are here legally—many of the refugees from Vietnam, many of the people who are here from Hong Kong and China—they would not dream of complaining—No. 1, I think culturally they would not go to an outsider, someone who is not Chinese, for example, and complain, even if they knew that there was someone who would enforce better working conditions.

Mr. **Miller**. Well, maybe in fact, then, there is—if that is the case, and I believe you correctly state the case—some rationale in what the Secretary is doing. But he is envisioning this being sort of a white suburban middle-class industry in the future, where they would understand those avenues of grievances that are open to them.

Miss **Wolin**. That is in the very, very distant future.

Mr. **Miller**. You don't think they are crying for homework out there in the suburbs?

Miss **Wolin**. In the suburbs? No. In the suburbs—definitely not in the suburbs.

Mr. **Miller**. John.

Mr. **Lawrence**. I just have a couple of very brief questions.

In the homework setting and in the factory setting in talking to these workers, were you aware of any articulated fear of immigration officials or of disclosure of their status as nonlegal resident aliens or citizens?

Miss **Wolin**. Definitely. Whenever we got into a discussion about our status, Merlina's status in the United States and their status, and we traded information about how to survive here illegally, they expressed a fear of being deported. They understand that when they see a policeman they should not run into an alleyway, because that just attracts attention to them.

So I got a lot of advice about walking down the streets as if I was in fact a citizen, and not running in the other direction. But in the shops, whenever an official came into the shop from the health department to fire extinguisher inspectors, you could feel this tremendous tension, everybody sort of tightened up, because it has happened in the past that immigration officials have raided these shops, although that has not happened in a long time. Street gossip tells most of these workers that it is a possibility any day. And they are afraid of it. They spent all of their life's earnings coming to this country. Many of them, if they get deported, go back to life-threatening situations, like presently exist in El Salvador, or in Guatamala. And they cannot think of anything that would be more horrible than being deported.

Mr. **Lawrence**. Were the homeworkers that you met aware of the fact that homework is illegal?

Miss **Wolin**. Yes; I didn't meet anyone who thought that it was OK to do it. They didn't realize—they realized it was illegal, but they never realized that the Labor Department or any official agency ever did anything about it.

Mr. **Lawrence**. Were you aware that they did?

Miss **Wolin**. I knew that the Labor Department and the labor commission in California do indeed try. But that it is very difficult for them, because unless a worker complains, or they have a hot tip about where this work is going on, it is difficult to get a search warrant and the legal process is very lengthy, and oftentimes the goods will already have been moved by the time they get into the home.

Mr. **Lawrence**. A series of very quick little questions. Most of the concern that has been raised about enforcement has been enforcement of the minimum wage laws. There are obviously other laws that apply to people in the garment industry, whether they work in a factory or at home.

Were you aware of the fact of homeworkers paying taxes?

Miss **Wolin**. I believe they do not.

Mr. **Lawrence**. What about social security payments? Are you aware of whether or not homeworker employers pay the employer's share and whether or not an employee's share of social security is deducted?

Miss **Wolin**. No; I believe there are no taxes being paid by the employer or by the worker.

Mr. **Lawrence**. Are they covered by workers compensation?

Miss **Wolin**. Hardly. They are not.

Mr. **Lawrence**. So then there is a long string of violations of law.

Miss **Wolin**. Plus health code violations also. In addition to recordkeeping violations, tax violations, wage and hour violations, there is tremendous health code violations in these environments.

Mr. **Lawrence**. Thank you.

Mr. **Miller**. As much as they were aware that the actual homework was against the law, were they also aware there was some minimum payment of compensation necessary.

Miss **Wolin**. They realized that. But they didn't think they could do anything about it, because they were not about to complain to anyone, and risk their status in the United States.

Mr. **Miller**. Thank you very much.

Miss **Wolin**. Thank you.

Mr. **Miller**. I would like to obviously commend you for your efforts and the resulting articles and publicity that you have given to this issue. You have obviously been commended by your colleagues and peers within the media and should be congratulated for that. But also I think that the series probably did more to jell the political situation surrounding this problem, because you are quite correct, there has been a tendency within the entire spectrum of the problem to ignore it. I think your article made it most difficult to ignore it. So we appreciate that. I think obviously the constituency that read it appreciated it. In their words, God bless you.

Thank you very much.

Mr. **Miller**. Next we will hear a panel of clothing manufacturers.

First, Peter M. Phillipes, representing the San Francisco fashion industry; Adolfo Mendez, western field representative, American Apparel Manufacturers Association; and Bernie Brown, vice president of Koret of California, Los Angeles, and chairman of the Coalition of Apparel Industries.

Welcome to the committee.

If you would identify yourselves for the reporter.

STATEMENT OF PETER M. PHILLIPES, ASSISTANT GENERAL COUNSEL, LEVI-STRAUSS & CO., SAN FRANCISO, CALIF.; ADOLFO MENDEZ, WESTERN FIELD REPRESENTATIVE, AMERICAN APPAREL MANUFACTURERS' ASSOCIATION; AND BERNIE BROWN, VICE PRESIDENT, KORET OF CALIFORNIA, LOS ANGELES, CALIF., AND CHAIRMAN OF THE COALITION OF APPAREL INDUSTRIES

Mr. **Phillipes**. My name is Peter Phillipes. I am an assistant general counsel of Levi-Strauss & Co. and a member of the board of directors of the Coalition of Apparel Industries in California and the San Francisco Fashion Industries, the latter of which I also serve as legislative committee chairman. I am accompanied by Bernie Brown, regional vice president of Koret of California, past president of the CAIC and cochairman of the National Coalition of Apparel Industries Education Committee.

I am testifying today at the subcommittee's invitation on behalf of Levi-Strauss & Co. and San Francisco Fashion Industries. Mr. Brown is appearing at the subcommittee's invitation on behalf of the CAIC and the National Coalition of Apparel Industries Education Committee.

Also present on my left is Adolfo Mendez, the western field representative of the American Apparel Manufacturers' Association, which is the leading national association in the apparel industry.

Levi-Strauss & Co. is the world's largest manufacturer of branded apparel, with major production and distribution facilities in 18 States. Our international division also maintains production facilities abroad for international distribution. Since 1979, Levi-Strauss & Co. has been the corporate parent of Koret of North America. Our sales volume in 1980 was in excess of $2.8 billion. San Francisco Fashion Industries is the trade association of the apparel industry in northern California. Its membership totals approximately 250 manufacturers, contractors, and suppliers.

The Coalition of Apparel Industries in California is the 600-member, Los Angeles based apparel industry association which concerns itself primarily with legislative, regulatory, and educational matters affecting California apparel manufacturers and contractors in California.

I believe it is fair to say that the members of both associations and certainly my company are unanimous in their continuing opposition to the concept of industrial homework in the garment industry. Members of our associations have been active supporters of both the Homework and Garment Industry Registration Acts in California.

These acts place California in a leadership position with regard to the protection of employee rights in our industry. In the case of Levi-Strauss & Co., as the chairman is aware, we submitted comments to the Department of Labor, on two occasions, in opposition to the Department's proposed elimination of the Federal prohibitions on homework. Copies of those comments are attached to my testimony.

While we would have no serious objection to a review of the homework rules that might allow the home production of handmade sweaters in Vermont, we believe that permitting homework in the women's apparel industry would foster unfair competition and would undermine the Labor Department's ability to enforce the minimum wage, overtime, child labor, and health and safety standards that are so important to garment industry workers.

Fortunately, we believe the Secretary of Labor now shares much of our concern. In meetings held with the Secretary on May 28, California garment industry leaders, both management and labor, were advised that the proposed elimination of the homework ban would be reconsidered in light of the large number of opposing comments received by DOL. We are further advised that the Secretary's goal was a more comprehensive plan for the elimination of unsuitable working conditions in the garment industry, including perhaps a more realistic, though comprehensive ban on homework, as well as certain changes in the basic statute underlying those regulations.

We are encouraged by the Secretary's proposal and have agreed to cooperate in his efforts through the formation on June 18, 1981, of the National Coalition of Apparel Industries Education Committee chaired by Mr. Brown on behalf of CAIC and Toni Hohberg on behalf of the Fashion Institute of Design and Merchandizing. I would like Mr. Brown to describe the work of that group and then we will both be available for questions.

Mr. BROWN. Gentleman, to give you a little bit more background on the coalition, as Mr. Phillipes stated, we are actually the legislative arm of the apparel industry here on the west coast. The coalition itself is about 6 years old. From very humble beginnings, as you heard, we have approximately 600 members now.

Our membership is unique in that it is diversified and includes manufacturers of all sizes, contractors, suppliers, and even some people in the financial end of our business.

Our goal is to provide leadership to the industry by taking responsible positions on legislative issues. I want you to know that initially we supported the Montoya bill which was the antihomework bill, and more recently we have been actively involved with many in gaining passage of the Garment Industry Registration Act.

So we have been part of this, we think it is important. We feel it is something that should be done, it is something that should be in our industry now.

Because of our interest in insuring proper working conditions in our industry, we responded to Secretary Donovan's recent homework proposal by meeting with him here in Los Angeles. At that time we provided him with the views of all segments of our industry. At his request we formed the National Apparel Industry Education Committee.

Now this committee had its first meeting about 10, 12 days ago. At that time we agreed to go forward with a program to educate both employers and employees about their obligations, the employers, their rights, the employees, under the State and Federal labor standard laws.

With regards to this committee's special interests at this hearing; namely the Federal prohibitions on homework, the CIAC firmly believes that such prohibitions continue to be necessary. In fact, if anything, they should be expanded to be consistent with our homework laws here in California, which are more stringent and cover a wider scope of limitations for homework.

We think it is extremely important.

Again, I also appreciate the opportunity of appearing here before you, and am open for any questions.

Mr. **Mendez**. Congressman Miller, I am Adolfo Mendez. I am the west coast representative for the American Apparel Manufacturers' Association. Our organization is the largest national apparel association. We represent over 615 member firms and account for approximately 70 percent of the sales volume of all the apparel.

You will be receiving a written statement in Washington from our headquarters. We would just like to make a few comments now.

We would like to add our voice in opposition to the Secretary of Labor Donovan's proposed lifting of the homework ban. We concur that the lifting would create an impossible situation of enforcing labor laws. It is extremely difficult now. So we can imagine what it would be like if it were lifted.

Additionally, it is my understanding any legitimate exceptions to this ban currently are allowed for in the regulations affecting the homework situation. So if there is any need for allowing individuals to work, handicapped individuals to work, whether in Vermont or elsewhere, I think they are already provided for.

So we are definitely opposed to lifting them for the general situation.

But I think I would like to add a different perspective to what we have been talking about. When Miss Wolin was talking, I felt like a fish out of water. I think that we are in two different apparel industries.

This industry, as Senator Montoya said, is a $40 billion industry in this country—$4 billion industry in California. We employ 1½ million employees in this country, and 125,000 in California. This industry, this type of business, cannot exist on a homework basis. It cannot exist on a sweatshop basis. So I think beyond the danger of the unenforcible labor laws, I think the emphasis on homework, sweatshop conditions, totally misconstrues this industry in this country.

And what it does beyond that, it prevents us from focusing our energies on the real challenges which face us in the future.

This industry is in a phase of transition. In the last 15 years, we have seen the penetration of imports increase from 5 to 25 percent of the market. The future and indeed the survival of this industry depend on our ability to increase our productivity through better technology and management techniques. Homework plays no part in this future. It hasn't played a part in this industry for the last 50 years. And it surely will not play it in the future.

Just in summary, I think Government officials have to refocus their own perspective and recognize that the apparel industry is no longer a cottage industry. It is a strong, viable contributor to this economy. I think it should be viewed as such. And everybody should move forward to face the real challenges that are facing us.

Mr. **Miller**. Let me just follow up on what you have said, Mr. Mendez, in the sense that you are not suggesting, however, that while you do not apparently concede that homework is a major issue, that if the ban was lifted that there would in fact be a proliferation of homework that I assume would be damaging to the manner in which the industry is trying to structure itself to compete in modern day economies.

Mr. **Mendez**. I think for that segment of the industry, small segment of the industry, smaller shops, smaller manufacturers, that definitely is damaging. It would create unfair competition for the smaller contractors, and for the smaller manufacturers, yes.

So I think the lifting of the ban would be totally wrong.

Mr. **Miller**. From a California perspective, where you have the ban at the State level, and you also now have the contractor registration law that will go into effect in the next couple of days, if the Federal law or ban is removed, what kind of impact do you envision for the industry in California—assuming obviously that other States do not go and reimpose a ban from the State level?

Mr. **Brown**. Well, for one thing, Congressman, we are in competition with the United States as well as with the world, as Adolfo mentioned. What would happen is that we would not be able to compete here in the State, because a contractor who would want to, or a manufacturer, doesn't make any difference, who would want to, would no longer have to pay rent, lights or anything else.

If it was legal, they would give out all their work to homework shops, and they would just have to have a truck to pick it up. Totally unfair competition, put us out of business in California. Even worse, the advantage that would be taken of people all over the country would be unbelieveable.

Mr. **Miller**. You had an opportunity to take a look at the proposed regulations, lifting the ban. The Levi Strauss letter was dated May 27. Have you found any evidence that would lead you to change your comments on behalf of Levi-Strauss to Henry White?

Mr. **Phillipes**. No. We strongly feel that the comments made in our letter would still stand, because there really is no justification that we know for removing the ban as it now exists.

As Mr. Brown indicated in his remarks, if anything, it would be a lot more logical to have the ban extended to other articles of apparel. Right now you are only talking about seven very selected industries, the most important of which economically is women's apparel. There is no reason why you should be able to sew a shirt at home and not be able to sew a woman's dress at home.

So from our standpoint, we would stay with our comments, and if anything, say it should be extended.

Mr. **Miller**. You are telling us that you suspect the same kind of abuses that occur in sewing blouses also occurs in sewing shirts.

Mr. **Phillipes**. I see no reason why it would not.

Mr. **Miller**. Can you give us some kind of indication, of the impact of lifting the ban. What are we talking about in terms of the adverse impact in dollars to legitimate industry in California?

Mr. **Phillipes**. It is really hard to quantify that. I would imagine that you are probably talking in the millions. But at what point in the millions it would really be hard to say. I would say it is a significant number that might run to illegal shops if the bans were to be lifted.

Certainly important enough to justify looking into it very carefully, and making sure that the eventual regulations we have are very carefully drawn and really address the problem.

Mr. **Miller**. Let me also try to get you on the record for the purposes of clarity. If the Federal ban is lifted, you see that you are put at a competitive disadvantage in two forms within the United States. One would be for other regions that would not have a strong State law—obviously it would seem to me that that might come from somewhere else in the Southwestern United States. And two, within California also, because those people who are willing to run the risk, would put you at a competitive disadvantage, as was pointed out by Mr. Lawrence, because of the lack of payment of social security, workmen's compensation, fringe benefits, and others.

Mr. **Phillipes**. Well, and if the Federal ban is lifted in California you have four enforcement people enforcing in California. You still have Joe Razo's people who would be out there. But all the Federal people would be removed from that activity.

Mr. **Brown**. Plus the fact it would be an impossibility to do any policing if homework was opened up. You would have to go into literally hundreds of thousands of homes. How would you know who is getting workmen's compensation, who is getting any of the niceties they are entitled to; it is an impossible policing situation.

Mr. **Miller**. I was just trying to compare this to the OSHA situation, in terms of the requirements vis-a-vis a warrant, if you are going to come onto the premises. What kinds of enforcement problems would that present to what potentially would be thousands of settings?

I wonder if you might, Mr. Brown, expand on how you envision the educational program that you are working on with the Secretary would be carried out.

Mr. **Brown**. Well, we just had the one meeting. But I think we have had a lot of conclusions of direction that we want to go in from that one meeting. The first thing we have, we already have a series of posters that are in the works right now.

Mr. **Phillipes**. There is some explanatory material that goes to the agenda of the first meeting and the kinds of committees being formed.

Mr. **Brown**. These posters would be in at least four different languages. What we would be doing is having posters and brochures. Again, this is something brought up before, we would have to get them in the hands of the right people. So we have asked, for example, the churches to help us so that maybe this could be posted in the churches. A lot of these people, as the reporter has said, are afraid to use the phone to call any kind of official number. We have asked the Korean church and they are willing to cooperate. We have asked the Catholic Church and several others—if we could give their number, sort of a hot line number, where these people can phone their own priest, their own minister, and when they do, they will be talking to someone in their own language, they are not afraid of them, and they can say, "Hey, I am not making minimum wage." They don't even have to give their name. Those phone calls then would go either to Mr. Raza or the Federal, and we have actually worked with Mr. Razo on this. His investigators would investigate at that point.

In many, many cases the workers unfortunately are not really aware of their rights. So part of these posters—for example—directed to employees saying something about, "Are you making a minimum of $3.35 an hour? Are you working overtime? Are you getting paid?" It is in their own language.

The other one, the one to the employer says, "Do you know that you must do the following: Keep records for such a length of time," so on and so forth.

This is a small part. Another part is that we have lined up already lectures to over 125,000 students in the high schools and colleges. Now, we don't know they are going to go into the apparel industry. But in many cases their families are in the apparel industry. We are educating them through these lectures of what their parents should be making and how if they are not making it, they are not jeopardizing anything by reporting it, because they are not jeopardizing for the simple reason their name is not going to be used. They are not going to be picked up. These are the names and addresses that Mr. Razo and other people need to go into the shops.

What we plan to do and are doing is doing this in California. It is a natural followup working with the legislators as we have in the past. And then presenting this to a group of manufacturers, contractors, associations, throughout the United States in the centers where we have a large apparel center, such as Chicago, New York, and show them what we have done, and ask them if they would like to do the same.

We will not be going into their territory running ads for them. But we will show them what we do, and show them what we have been able to achieve and ask them to do the same thing. That is where the national comes in. We will be meeting with them.

Mr. **Miller**. You are not suggesting however that that is a substitute for the ban on homework?

Mr. **Brown**. No way.

Mr. **Miller**. The education program is designed to address the ongoing wide spectrum of problems within the industry that exist today with or without the ban. You are talking about people's rights under the existing Fair Labor Standards Act.

Mr. **Brown**. Absolutely. In fact, there is no replacement for it. This is just a help. We are not a policing power. We are not saying we can take over any policing activities. We need the laws and we need the enforcement.

Mr. **Phillipes**. The Secretary indicated to us at our May 28 meeting that he wanted some major effort coming forward from the apparel manufacturers, from the industry in cooperation with labor and the contractors, and other interested groups. And I think the Education Committee was in response to that. It was to be part of a broader effort. Certainly not as a tradeoff for the homework ban.

The homework ban really would be part and parcel of this broad effort. As I say, we certainly would not want to trade one for the other.

Mr. **Miller**. I want to get into the second issue, however, that is a very important point, because I think there is a perception that self-policing and education, would be a legitimate substitute for the Federal ban on homework. And it is not—that is not your opinion.

Mr. **Phillipes**. No. The way we define self-policing is a firm is educated and then polices itself, it checks to make sure it is paying its workers the proper amount, keeping the proper records, goes to the proper State agency to get the information, and it takes care of its own house.

My company cannot go out and police some other apparel company. we are not the Government.

Mr. **Miller**. Let's go to that point.

I think, Mr. Brown, you have indicated at least in the press that you were somewhat concerned with the suggestion that there be self-policing, one member of the industry policing another member of the industry. I didn't quite understand. There may be some economic advantage to getting the other guy. Has such a suggestion been discussed within the industry?

Mr. **Brown**. No, it never came up at all.

Mr. **Miller**. OK. You are talking about within individual manufacturers, making an effort to inform their workers or supervisors and people within management of people's rights under the Fair Labor Standards Act, and then policing their people, so to speak, to see that those rights are not violated.

Mr. **Brown**. We are well aware of a shop that is in violation, that purposely is in violation. It is not going to put up any of our posters or anything else. We are trying to get to these employees who work for all the shops and get to them to tell them what they should be getting and how they can handle themselves without jeopardizing their position themselves but still getting what they should be getting for them. We at no time have talked about policing one another.

Mr. **Phillipes**. But we are interested in assisting the State enforcement people here in California, and the Federal people nationally. Recently in connection with the new Garment Manufacturer Registration Act that Senator Montoya sponsored, we both publicized and gave the offices of our two associations, the Coalition here in Los Angeles, and San Francisco Fashion Industries in San Francisco, over to the people from the State labor department to begin the registration of manufacturers and contractors in the State. And I think by doing that, we brought in many people who might not have registered otherwise.

Mr. **Miller**. Again, just to clarify the record. You do not see self-enforcement within manufacturers or the education program really having much of an effect on those individuals who would intentionally violate the law?

Mr. **Brown**. Intentionally, no. But I think you will find in many cases where the influx of a lot of people from different countries now that come in, the only background they have is sewing, and they open a small place with maybe just a few machines, in many cases they have never heard in Vietnam of workmen's compensation, they know nothing about piecework. I am not saying it is all ignorance, because it is not. But in many cases they really do not know what they are supposed to be doing. In many cases it is an educational program that will help that out.

Unfortunately it is going to be mostly getting to the workers and not to the employers that we really have to do. I will say one other thing. Part of this program is in the school—and the school is going to be doing this and that is conduct classes for manufacturers and for contractors in how to best understand how to price garments, because in many cases maybe a contractor is squeezed too hard for price, and he does not have the money to pay the workers.

So what we are trying to do is do an educational program there. That is not part of CIAC, but through CIAC the school is going to be doing it. We think it is a good step.

Mr. **Mendez**. I would like to make a statement regarding self--policing. The terminology is incorrect. I am a firm believer in associations and the ability of individual manufacturers within associations to influence each other. I would like to separate this from the issue of the ban or the lifting of the ban. I think there is no disagreement in anybody's mind that the ban should not be lifted. But as regards to other areas of the law, or the behavior of manufacturers, and I think we have them within the Coalition, within the American Apparel Manufacturers Association, codes of ethics, and standards of professionalism, that I think can be shared with the rest of the industry, and would serve to eliminate some of the negative aspects.

What I am trying to say is that I don't think we are abdicating entirely our own self-education to Government agencies. I think where laws exist they should be enforced. We are in full agreement with that, but where they do not exist, in the future, the industry can deal with it.

Mr. **Miller**. In your discussions with the Secretary, it is my understanding that he also discussed with you his belief—if not specific proposal—that the penalties should be substantially strengthened for those people who would violate the Fair Labor Standards Act. Can you express your support or opposition or concern about that?

Mr. **Brown**. We don't oppose that.

Mr. **Miller**. I don't want to put words in your mouth.

Mr. **Brown**. We don't oppose it. In fact, the reason I think is a good reason for it. In the past there wasn't really any kind of a penalty for the manufacturer. For example, if they didn't pay their minimum wage, all they had to do was make up that amount, and they could do it again. His proposal is that there be a fine at that particular time. He gave a couple of figures. He wasn't certain whether he would stick to those figures or not.

Nevertheless, it did impose a penalty from the very first violation where they did not obey the laws. We agree with that.

Mr. **Phillipes**. I think it is fair to say my company basically supports that kind of approach. We do have a question about a portion of his proposal where he wants to extend the statute of limitations on some of these because he wants to give the bureaucracies a little more time to react.

I guess our feeling is the bureaucracies in many cases react slowly enough, and we don't want to do anything to encourage them to act more slowly.

Mr. **Miller**. We would agree with that.

John.

Mr. **Lawrence**. I was wondering if you might describe your communications that you have had with the regional committees or the proposed regional committees. You list California, Texas, Illinois, Florida and New York as being committees or groups that you have already been in touch with.

In your communication with your counterparts throughout the rest of the country, in the manufacturing end of the garment industry, or anywhere else, have you found the same general level of opposition to the Secretary's proposed lifting of the homework ban, and the same general interest in cooperative efforts among industry and labor for tougher enforcement and better——

Mr. **Brown**. That is two questions. First, it is universal that they all feel exactly the same about the lifting of the ban. There is no doubt about that. Everyone I have talked to in all the different States.

Mr. **Lawrence**. Regardless of the region of the country?

Mr. **Brown**. Made no difference whatsoever.

As far as wanting to join us in this educational program, the Chicago, Illinois groups, they would be delighted to join us. The Dallas group said they would be delighted to join us. The New York group, not so delighted to join us. We have not really made contact with the people in Miami yet because of the lack of an organization down there that we thought was the right organization. We haven't found them yet. I don't mean they haven't got one.

I would say we got two out of three. As they say in the vernacular, that ain't too bad.

Mr. **Lawrence**. Either Mr. Phillipes or Mr. Brown, I don't recall which, made a statement that in the absence of a ban, you are afraid that a substantial amount of work would go to a homework setting. I wonder in your knowledge of the industry whether there is any comparison between quality control, for example, in a homework setting versus a factory setting. In other words, can you speculate any impact with respect to what the consumer might receive?

Mr. **Phillipes**. I will speculate a little bit, just because I have been in a number of Levi-Strauss factories, and I know the kinds of quality control operations that are built in, and the number of checks. I am sure that is true of most of the reputable manufacturers, where they are concerned about what reaches the ultimate consumer.

You have got quality control people at several points in the operation, in any significant garment, whether it be a shirt, a pair of jeans, or a woman's dress. In the homework situation basically you have got someone either taking a bag of homework, or having goods dropped off, and then being picked up in bulk, so that you have no one checking along the way.

Perhaps when it gets back to the central receiving point, someone will look at some of the garments. But I think it would be physically impossible to do the kind of quality control that the reputable garment manufacturers will do in the plant.

Mr. **Lawrence**. Thank you.

Mr. **Miller**. Mr. Goldberg.

Mr. **Goldberg**. No questions.

Mr. **Miller**. Thank you very much again for your time and your expertise and your comments.

As I said at the beginning, we will make this record available to the Secretary under the provisions of the public comment period, which closes next week.

Thank you for bearing with us.

Let me also say that I think the statements and the posture and the public stand that the industry has taken in this case is a tremedous credit, because as has been pointed out, clearly you are taking your share of lumps, some of which have been deserved, and in some cases I guess maybe not.

But I think in any instance, your experience within the industry to speak out against the lifting of the ban is terribly helpful in directing the discussion of the ramifications of the proposed actions.

So I appreciate that very much.

Mr. **Phillipes**. Thank you.

Mr. **Brown**. Thank you.

Mr. **Mendez**. Thank you.

Mr. **Miller**. We are going to take a 5 minute break, at which time we will come right back and hear from Mr. Cornelius Wall and Mr. Joe Razo, chief State enforcement officer for this problem.

[A brief recess was taken.]

[Prepared statement of Peter M. Phillipes follows:]

PREPARED STATEMENT OF PETER M. PHILLIPES, ASSISTANT GENERAL COUNSEL, LEVI STRAUSS AND CO., AND CHAIRMAN, LEGISLATIVE COMMITTEE, SAN FRANCISCO FASHION INDUSTRIES

My name is Peter M. Phillipes. I am an Assistant General Counsel of Levi Strauss & Co. and a member of the Board of Directors of the Coalition of Apparel Industries in California (CAIC) and the San Francisco Fashion Industries, the latter of which I also serve as Legislative Committee Chairman. I am accompanied by Bernie Brown, Regional Vice President of Koret of California, past President of the CAIC and Co-Chairman of the National Coalition of Apparel Industries Education Committee. I am testifying today at the Subcommittee's invitation on behalf of Levi Strauss & Co. and San Francisco Fashion Industries. Mr. Brown is appearing at the Subcommittee's invitation on behalf of the CAIC and the National Coalition of Apparel Industries Education Committee.

Levi Strauss & Co. is the world's largest manufacturer of branded apparel, with major production and distribution facilities in 18 states. Our international division also maintains production facilities abroad for international distribution. Since 1979, Levi Strauss & Co. has been the corporate parent of Koret of North America. Our sales volume in 1980 was in excess of $2.8 billion.

San Francisco Fashion Industries is the trade association of the apparel industry in Northern California. Its membership totals approximately 250 manufacturers, contractors and suppliers.

The Coalition of Apparel Industries in California is the 500 member Los Angeles based apparel industry association which concerns itself primarily with legislative, regulatory and educational matters affecting California apparel manufacturers and contractors.

I believe it is fair to say that the members of both associations and certainly my company are unanimous in their continuing opposition to the concept of industrial homework in the garment industry. Members of our associations have been active supporters of both the Homework and Garment Industry Registration Acts in California. These Acts place California in a leadership position with regard to the protection of employee rights in our industry. In the case of Levi Strauss & Co., as the chairman is aware, we submitted comments to the Department of Labor, on two occasions, in opposition to the Department's proposed elimination of the federal prohibitions on homework. Copies of those comments are attached to my testimony. While we would have no serious objection to a review of the homework rules that might allow the home production of handmade sweaters in Vermont, we believe that permiting homework in the women's apparel industry would foster unfair competition and would undermine the Labor

Department's ability to enforce the minimum wage, overtime, child labor and health and safety standards that are so important to garment industry workers.

Fortunately, we believe the Secretary of Labor shares much of our concern. In meetings held with the Secretary on May 28, California garment industry leaders, both management and labor, were advised that the proposed elimination of the homework ban would be reconsidered in light of the large number of opposing comments received by DOL. We are further advised that the Secretary's goal was a more comprehensive plan for the elimination of unsuitable working conditions in the garment industry, including perhaps a more realistic, though comprehensive ban on homework, as well as certain changes in the basic statute underlying those regulations.

We are encouraged by the Secretary's proposal and have agreed to cooperate in his efforts through the formation on June 18, 1981, of the National Coalition of Apparel Industries Education Committee chaired by Bernie Brown on behalf of CAIC and Toni Hohberg on behalf of the Fashion Institute of Design and Merchandising. I would like Mr. Brown to describe the work of that group and then we will both be available for questions.

LEVI'S

January 9, 1981

Mr. Henry T. White Jr.
Deputy Administrator
Wage and Hour Division
U.S. Dept. of Labor
200 Constitution Ave., N.W.
Washington D.C. 20210

Dear Mr. White:

In the Federal Register of December 5, 1980, the Wage and Hour Division of the Department of Labor announced that it will be conducting hearings on January 13th and February 17th for the purpose of obtaining information concerning the employment of homeworkers, and that in connection therewith has asked that interested parties file comments with your office.

As a major U.S. apparel manufacturer, with its headquarters in California for over 100 years, we are fully aware of, and wholeheartedly endorse the approach toward industrial homework embodied in the California Labor Code (Sections 2650 et seq.). The Code provides for stringent regulation, including confiscation and forfeiture of unlawful industrial homework.

Section 2651 of the California Labor Code flatly prohibits the "manufacture by industrial homework...of articles of wearing apparel...". In the California Code, there are no limitations on this broad category of manufactured goods, whereas in the Regulations of the Federal Wage and Hour Division, there is a provision for the issuance of Industrial Homework Certificates in the case of the "women's apparel industry" and in the "knitted outerwear industry."

We submit that the continuation of Federal Regulations permitting industrial homework in any branch of the apparel industry is an anomalous situation, resulting in competitive injury to the industrial sector, which produces goods in the factory environment exclusively and serving as a potential source to undercut the labor and health standards sought to be safeguarded by state legislation.

In addition, we believe that permitting industrial homework in any form undermines the Labor Department's ability to effectively enforce provisions of the FLSA as well as other Federal acts designed to protect employee rights.

Accordingly, we respectfully urge that your office consider the elimination of that portion of the existing Regulations as they relate to any branch of the apparel industry.

Very truly yours,

Peter T. Jones

Peter T. Jones
Sr. Vice President
and General Counsel

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May 27, 1981

Henry T. White, Jr.
Deputy Administrator
Wage and Hour Division
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

Dear Mr. White:

Thank you for providing to us a copy of the Federal Register Notice of May 5, 1981, encompassing the Labor Department's proposed rule-making regarding the employment of home workers in certain industries (29 CFR Part 530). As my letter of January 9, 1981 indicated, we believe prohibitions upon the use of homework in the apparel industry have a salutary effect and we continue to oppose attempts to remove such restrictions at the Federal level.

In the preamble to the proposed removal of Part 530, your Department notes that "the testimony was conflicting with regard to the effectiveness of the Regulations in safeguarding the minimum wage and raised serious questions as to the effectiveness of the Regulations in protecting the workers." While we are not privy to statistical data relating to the effectiveness of the present Regulations, it is our strongly-held belief that a far more suitable response to the question of regulatory effectiveness would be improvement and strengthening of the regulations, including more stringent sanctions for violation, rather than their total elimination. It seems ludicrous to us to say on the one hand that workers need protection and that the present Regulations may not protect them sufficiently and to say on the other hand that it follows that the abolition of the Regulations will provide that protection.

We are aware that at hearings held on the subject in Washington in February, arguments were made on behalf of local industries such as hand-knitted sweaters, gloves and mittens to the effect that continued prohibition of homework in such industries would eliminate a meaningful source of employment. Those arguments

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identify a discrete problem which can be better solved by a discrete solution, namely the establishment of a permit system administered by the Labor Department and limited to those very few industries where homework under controlled conditions may be appropriate. Under such a system, the supervising manufacturer might be required to submit monthly payroll reports substantiating the fact that all employees were paid appropriate wages. Except for such a very limited program, however, allowing homework in the apparel trades would be highly inadvisable and likely to encourage the kinds of abuses Secretary Donovan seeks to eliminate.

With specific regard to the questions upon which comments were requested, our responses are as follows:

1. We believe a general removal of the prohibitions on homework would undercut the minimum wage provisions of the Fair Labor Standards Act. Policing the minimum wage law in the apparel industry, one made up of a few large companies and thousands of smaller producers, is at present a very difficult task due to the sheer number of establishments that must be checked. To compound the problem by permitting unrestricted homework would make the task an impossible one.

2. In regard to the women's apparel industry, in which we are a major producer, we believe that the impact of this proposal would be extremely negative in terms of ease of enforcement and protection of workers. In addition, as noted above, unlike the very specialized hand-woven mitten industry, etc., there is neither the need nor the justification for the elimination of the homework restriction in women's apparel. If any industry requires the prohibitions against homework, this is the one.

3. We believe that the impact of this proposal on small businesses would be harmful. The legitimate small businessman who is diligently attempting to meet the various state and federal legal requirements under which the apparel industry operates, would be at a severe competitive disadvantage vis-a-vis the businessman who seeks to avoid the many important workplace safeguards -- both physical and financial -- through the extensive use of homeworkers.

It is our strong recommendation that the Labor Department reexamine the homework question and rather than eliminating the prohibitions contained in the present Regulations, it propose new, more effective and realistic regulations which will insure that garment industry workers are adequately protected and responsible manufacturers are not subjected to unfair methods of competition. We would be pleased to cooperate with you on such a project.

Very truly yours,

Peter T. Jones
Senior Vice President and
General Counsel

PTJ:PMP:ab

cc: Honorable George Miller
Chairman, Subcommittee on Labor
Standards

Mr. **Miller**. The hearing will reconvene.

At this time we will hear from a panel comprised of Amado Gallardo, with the California State Federation of Labor and Cornelius Wall, vice president and regional director, Western States Region, International Ladies Garment Workers Union, AFL-CIO.

STATEMENT OF AMADO H. GALLARDO, CALIFORNIA STATE FEDERATION, AFL-CIO, AND CORNELIUS WALL, REGIONAL DIRECTOR, WESTERN STATES REGION, INTERNATIONAL LADIES GARMENT WORKERS UNION, AFL-CIO

Mr. **Gallardo**. Thank you.

Congressman Miller, counsel, the California Labor Federation is absolutely opposed to any erosion of the current Government safeguards like regulation CFR 29, part 530 governing industrial homework—the contracting out of labor intensive production like garment manufacturing to workers who operate out of their own homes and apartments.

The extensive exploitation of employees that stems from industrial homework is well known and extensively documented. Industrial homeworkers are generally drawn from the most economically distressed segments of the labor force, undocumented and minority female workers with children.

I can go on and on, but you have the report before you.

We strongly urge the Congress to fight vigorously against any and all efforts to remove or otherwise erode the existing restrictions on industrial homework. If anything, a renewed commitment to the enforcement of current requlations should be encouraged by Congress as in California which now requires the registration of all garment manufacturers, to end a national disgrace which is once again rearing its ugly head.

[The prepared statement of Amado H. Gallardo follows:]

Prepared Statement of Amado H. Gallardo, California Labor Federation, AFL-CIO

The California Labor Federation is absolutely opposed to any erosion of the current government safeguards like regulation CFR,29 Part 530 governing industrial homework--the contracting out of labor intensive production like garment manufacturing to workers who operate out of their own homes and apartments.

The extensive exploitation of employees that stems from industrial homework is well known and extensively documented. Industrial homeworkers are generally drawn from the most economically distressed segments of the labor force, undocumented and minority female workers with children.① Employees engaged in industrial homework are cut off from all state and federal protections covering wages and working conditions. Homeworkers do not receive extra compensation for overtime, are forced to pay contractors for any poor quality production performed and because they work "off the books," these workers are not eligible for Social Security, unemployment or disability insurance benefits. Besides the eye strain, back ailments and other occupational hazards common to garment manufacturing, homeworkers are often forced to use hazardous chemicals like dyes without adequate ventilation or equipment. Yet despite all these health hazards, homeworkers cannot apply for workers compensation benefits.

These abuses are just the tip of the iceberg. Often contractors make phony deductions from the pay of homeworkers simply to reduce their labor costs. One woman in New York told a reporter that her pay was reduced by 6% a week, not for Social Security, but for the privilege of working "off the books." Homeworkers are also forced to pay false state and federal tax deductions from their already below minimum wage income, out of ignorance or fear of losing their job and/or being reported to the immigration service. Needless to say, tax evasion among these labor contractors is commonplace. In California, almost every homework violation turned up by the state's labor commission found homeworkers receiving wages below the minimum wage. Yet even paying wages below the minimum is not low enough for these illegal contractors. Very often, firms report undocumented homeworkers to immigration authorities right before payday so that they can avoid paying any wages at all.

Congress has understood the potential for abuse under industrial homework and in 1938 severely restricted its use under the Fair Labor Standards Act. In many instances, Federal law was supplemented by state legislation and until the late 1960's, the practice had been seriously reduced. However, in recent years industrial homework has exhibited a cruel rebirth in many parts of the country. Industrial homework now flourishes throughout the nation, from Los Angeles to Philadelphia and even in such unlikely areas like Vermont.

Even under existing law, the enforcement of anti-homework regulations is a difficult task. The decentralization of homeworkers into hundreds of living quarters throughout a city makes crackdowns exceedingly difficult. Because of high minority unemployment levels and the large number of undocumented workers, homeworkers are often unwilling to report any abuse to local or federal authorities.

When President Carter visited the Bronx in 1978, if he had only taken the subway south to streets like Southern Boulevard and Willis Avenue, he would have heard a constant buzz from the many sewing machines humming away within the second story windows of the row houses. There would be no difference between these neighborhoods and those third world cities where the exploitation of homeworkers is part of daily life.

Industrial homework, especially in garment manufacturing, is now on the rise in many parts of the nation for several reasons. The flight of legitimate garment production overseas in search of low labor costs, even by firms located in the U.S. South, has increased the competitive pressures on those companies which have remained. Fifteen years ago, 40% of all legal U.S. garment production was located in New York City. Today that figure is 15% and falling. Similar declines have hit other American garment manufacturing centers. Imported garments now comprise one out of every five pieces of clothing sold in the U.S. and this figure is expected to reach 50% by 1990.

But international competition, by itself, did not generate the growing use of homeworkers. ~~Easily exploited labor must also be available.~~ High minority unemployment rates and the growing number of undocumented workers during the last 12 years has provided such a pool.

According to some estimates, when a woman takes work home, the firm's production costs are cut in half. Even if homeworkers received the same wage rates as their counterparts in the factory (which they do not), production costs are substantially lowered. This is because homeworkers must pay for the electricity used, must buy their own thread, and also pay off the loans on their sewing machines, generally procured at loan shark interest rates. Because of the fantastic cost reductions offered by homework, as well as the unfair foreign competition, legitimate small firms unable to afford to move overseas have looked to homework to keep up with their domestic competitors already utilizing the practice. Thus, industrial homework poses a major survival threat to legitimate domestic producers, both union and non-union.

To even suggest at this time that the federal government lift its restrictions on industrial homework represents a sick joke and an obscene lack of sensitivity to America's minority and female workers, and indeed to every person who labors for a living. Yet this is exactly the suggestion by the United States Secretary of Labor, Ray Donovan.

Donovan's proposal has been strongly backed by New Right groups like the Capital Legal Foundation of Washington, D.C. and the New England Legal Foundation, based in Boston. The Capital Legal Foundation is an affiliate of the National Legal Center for the Public Interest, a group which has made a specialty of harassing government agencies like OSHA.

The proposal to destroy the law on industrial homework has been supported on three grounds, all of them fallacious. First, the standard argument, and one heard so often these days, is that the homework prohibition represents excessive government regulation on private enterprise, preventing the plucky small entrepreneur from contributing to our nation's economic growth. In fact the restrictions on industrial homework, when adequately enforced, has worked to increase economic growth by encouraging garment manufacturers to shift to more capital intensive production techniques instead of labor intensive methods which erode the standard of living for workers.

The elimination of homework restrictions implies a tacit approval for the flourishing underground economy currently plaguing the U.S. economy. This illegal production already siphons off millions of tax dollars annually and by ending homework restrictions this revenue loss can only grow.

A second argument against the homework ban is that the industrial homework prohibition has eroded the traditional cohesion of the family. This contention would be absurd were it not being so seriously proposed. How industrial homework, as it has forced women workers to labor for long hours for low pay, as it has forced mothers to "subcontract" to their children to raise the household income, fosters a nurturing, loving home environment is beyond our belief, as it is for most rational individuals.

Finally, pro-homework supporters claim that elimination of the homework prohibition is energy saving because these homeworkers do not have to commute to work, therefore making our economy more efficient. This may be true, but it misses the real purpose behind the federal homework restrictions. These regulations were designed to eliminate the unhealthy living conditions suffered by thousands of homeworkers, as well as the mental and emotional anguish such work causes. There are far more superior and humane ways to save energy than by sanctioning industrial homework.

We are dismayed by the Department of Labor's inconsistent policy in this area. One day Secretary Donovan is staging raids on New York sweatshops, while the next day he wants to cut 30 employees from the department's bureau charged with enforcing the homework regulations. We view such policy shifts as inconsistent and inadequate in meeting the needs of U.S. working people.

We strongly urge the Congress to fight vigorously against any and all efforts to remove or otherwise erode the existing restrictions on industrial homework. If anything, a renewed commitment to the enforcement of current regulations should be encouraged by Congress as in California which now requires the registration of all garment manufacturers, to end a national disgrace which is once again rearing its ugly head. ②

Mr. Miller. Thank you.

I also want to note that statement is also on behalf of Jack Henning, president of the California Federation.

Mr. Wall. Mr. Chairman, ladies and gentlemen, before I start, I have the authority to announce that the city council and the mayor of Los Angeles have just passed a resolution opposing the lifting of the ban on homework. This word just came to me. I wanted the committee to know this.

Mr. Miller. Were there any dissenting votes?

Mr. Wall. I am not sure. I don't know what the vote was. I understand it was unanimous.

Mr. Miller. Wonderful.

Mr. Wall. At the outset, let me introduce myself. My name is Cornelius Wall. I am regional director of the Western States region of the International Ladies Garment Workers Union and a vice president of ILGWU. I started in the women's garment industry as a presser in one of the California shops back in 1946.

In more than 35 years that have elapsed since I began working in the industry, I have had full opportunity to observe and study its economic situation, as well as the impact that industrial homework, legal and illegal, has on the operations of legitimate firms that try to run their factories in a decent fashion, and the way homework activities fostered by the unscrupulous employers affect the opportunities for many workers to earn an honest living in the industry's factories.

My awareness of these problems became greater after I became an officer of the ILGWU. As a business agent I studied conditions in individual firms, then, as a manager of the San Francisco Joint

Board of the ILGWU, I negotiated and administered union agreements in the San Francisco area. Finally, as director of the Western States region, my responsibilities embraced a larger geographic area.

Thus, when I discuss industrial homework and its effect on the employment and welfare of both workers and employers, I can talk with the authority and experience of the many years that I have devoted to study, observation, and contract enforcement.

As all of you are aware, the Administrator of the Wage and Hour Division has banned industrial homework in seven industries where such activity resulted in obnoxious violations of the wage-hour law. This included, among others, the women's apparel industry, knitted outerwear, and embroideries; all branches of the industry in which our members are trying to earn a living.

The reasons for banning industrial homework were spelled out extensively in the findings of fact and opinions issued by the Administrator at the time he issued the particular regulations. I do not need to spell them out. They are a matter of record and are well known to your committee and your staff

Suffice to say, that the findings indicated that homework was much too extensive in these fields, that its presence was accompanied by massive violations of the minimum wage, and of the overtime and oppressive child labor provisions of the Fair Labor Standards Act. On reviewing all the facts and the consequences of such violations, the Administrator concluded that homework had to be eliminated; its existence could be justified only where there were handicapped individuals who could not leave their homes or persons who could not leave their homes because they had to take care of handicapped individuals. Furthermore, this had to be done to safeguard the minimum wages recommended at the time by the various industry committees.

The effect of these regulations was to significantly diminish homework operations in the seven restricted industries, including those branches in which the ILGWU had members. That this was indeed accomplished can be seen from a homework survey conducted by the Wage and Hour Division in 1959. Only some 2,500 industrial homeworkers were found in the seven regulated industries, compared with some 20,000 homeworkers spread over the rest of American industry.

It should be borne in mind that many of the 2,500 workers in restricted industries fell into the category of handicapped individuals who could be employed as industrial homeworkers. Thus, for a large number of years since 1940, industrial homework in the seven restricted industries was significantly diminished, though at no time was it fully eliminated.

What has happened in the last decade, however, is that gradually homework began to increase in the restricted industries. In part this was due to the fact that people were unaware or had forgotten that homework is not allowed in these industries.

In part it was due to the inadequate enforcement activities of the Wage and Hour Division, which, at best, inspected but 2 or 3 percent of covered establishments.

Thus, only occasionally did the Wage and Hour Division run across the unreported illegal cases of industrial homework. Increased immigration from countries where homework existed, also brought some of it over to this country. Thus, these and other causes generated anew the problem of industrial homework and its competition with fair employers and the employment they offered to their workers.

In our own State of California we recognized this condition rather early. While we do have a homework limitation law on our State statute books, it was not very effective, at first. Once the insufficiency of the California legislation was recognized, the law was significantly strengthened, homework was then by-and-large prohibited, and companies giving out homework became subject to increased penalties. This was highly desirable to supplement the rules and regulations applicable to the seven restricted industries under the Fair Labor Standards Act.

It was therefore shocking to discover that early in May of this year, Secretary of Labor Raymond Donovan issued a proposal to remove the regulations limiting industrial homework in the industries where it constituted a major problem and threatened the minimum wage and its enforcement. I have reference to his suggestion to ban the regulations contained in chapter 19, part 530, of the Code of Federal Regulations.

It was all the more shocking because the particular proposal failed to examine in detail the results of 4 days of hearings that were held in Burlington, Vt., and Washington, D.C., on some aspects of the regulations. Contrary to the usual practice, Secretary Donovan failed to examine the evidence and therefore arrived at conclusions not justified by the facts in the case.

The overall views and evidence presented by spokesmen for industry, labor, and by several State agencies that had to deal with industrial homework was strongly and unanimously in favor of maintaining the existing restrictions, and for their expansion to branches of industry in which no current restrictions exist.

The impact of the Secretary's proposal on the minimum wage provisions of the act, were he to lift the ban on industrial homework in the seven regulated industries, would be to magnify violations of law, and make it increasingly difficult for fair employers, including employers under contract with our union, to operate their factories and to meet unfair competition emanating from those firms that choose to rely on homeworkers to get out their production.

Secretary Donovan raised a question regarding the impact of his proposal on small businesses. He obviously is not aware that the typical firm in our industries and others where homework employment was banned is small business. In our case, most companies employ less than 60 people.

Thus, when I am referring to the negative impact of the proposed restoration of industrial homework, I can only speak of its effect on small business, for this is what our industry consists of. The effect, therefore, would be a massive loss of factory jobs, something that I don't even want to contemplate, something that would affect workers who have toiled over many years both for improvements in the legal minimum wage structure as well in securing better economic and working conditions in the factories where they work.

I am offering these views, based on my personal and intimate knowledge and experience with the operations of firms in our industry. I recognize that publicly Secretary Donovan indicated, both in the East, as well as more recently on this coast, his desire to strengthen the enforcement of the wage and hour law. Let us assume that these are his true hopes and intentions. However, his actions both in stripping the size of the enforcement force of the Department of Labor, as well as his proposed action in the case of industrial homework, can only have the opposite effect from that which he professes to advance.

Violations will grow. Just as in the past, industrial homeworkers in these industries will not increase their reports of minimum wage, overtime, or child labor violations without fear of losing their employment. Their fears would remain the same as they are now.

Take the case of those areas where homework continues to exist but which are not regulated as is the case in the seven industries. Neither the situation which existed before adoption of the present regulations in the forties or the present homework situation outside the regulated industries gives any hope that Secretary Donovan's proposals are on the right track. Just the contrary.

My experience, extensive as it is, fully supports the findings of the report of the Minimum Wage Study Commission that was appointed after the Fair Labor Standards Amendments of 1977 were adopted by the Congress of the United States. This Commission has devoted the last 3 years to the examination of the social, political, and economic ramifications of the Wage and Hour Law.

Let me read to you a portion of their report that deals with industrial homework; more specifically with section 11(d) of the Wage and Hour Law which was adopted by the Congress in 1949 to give additional powers to the Wage and Hour Administrator to regulate industrial homework outside the seven restricted industries and to ratify the then existing homework regulations and incorporate them into the law.

The Commission had this to say, and I quote:

> The Commission recommends that the section 11(d) homeworker certification provisions be retained. The original purpose of this provision was to reinforce the authority of the Department of Labor to control effectively the production processes associated with industrial homework and to curtail the development of exploitive labor practices among establishments using this method of production. The Commission's action is taken to reaffirm its commitment to these goals and in recognition that continued vigilance is required to insure that substandard wages and working conditions do not again become a condition of employment for workers with few job alternatives.

I am in full accord with the Commission's findings and recommendations. They clearly go counter to the proposal offered by the Secretary of Labor in his May 5 notice.

Let me conclude. I strongly urge your committee to recommend to the Secretary of Labor that he should reconsider his proposal to wipe out homework regulations. He should retain them, and if anything, extend the rules to other areas where homework might have increased and thus threatens the payment of the legal minimum wage.

The impact of his proposal on the operations of the seven industries is far more extensive than he has assumed. The firms that will be most hurt by his proposal are the very firms that apparently caused him concern. I am talking of small businesses which are typical in the seven restricted industries, as well as their employees.

It is unfortunate that I have to criticize Secretary Donovan for his lack of foresight, but his proposal to abolish the homework restrictions leaves me without an alternative.

Thank you, Mr. Chairman.

I do have with me here a number of copies of letters that were sent to the Secretary and to the Deputy Administrator. I would like for the record to read the names of the authors of these letters, if I may.

From the Governor of California, Jerry Brown. From the mayor of Los Angeles, Mayor Tom Bradley. The executive secretary-treasurer of the California Labor Federation, John Henning. From the executive secretary-treasurer of the L.A. County Federation of Labor, Wiliam R. Robertson. From the director of the State of California Department of Industrial Relations, Donald Vial. From the general counsel, Levi-Strauss Co., Peter T. Jones. From the California State Labor Commissioner, Albert Wright. From California State Senator Joseph Montoya. From California State Senator Bill Greene. From California State assemblyman, Art Torres. From L.A. County's supervisor, Edmund Edleman. From L.A. County city councilman, Gilbert W. Linsey, and from Professor Sheldon Myron, from California State University.

I would like those in the record, Mr. Chairman. I have copies for the committee here.

Mr. **Miller**. I appreciate that. They will be made part of the record. They will also be submitted for inclusion in the public comment.

Mr. **Wall**. Thank you.

Mr. **Miller**. We have concentrated with the previous witnesses, Mr. Wall, more on the issue of wages and whether legal compensation has been provided or not. I wonder if I might ask you, because of your familiarity with the industry, what your knowledge is with respect to a concern that I have, and that is health and safety of the worker, the operator in this case, and the surrounding conditions.

I would hope you would feel free to comment both from the extent of your knowledge in the homework setting and also in the organized setting of a factory and out of the home.

Mr. **Wall**. Well, Mr. Chairman, let me first comment on the homework situation. Of course we run across it continuously. Since we have no authority to do anything about it, we of course turn that over to the State enforcement agencies, and they are the ones who pursue that.

We do see the conditions that homeworkers work in. And of course, to say the least, some of them are very bad.

I think the best thing you could say about that is that in the homework situation there would be no ability of the enforcement agencies' health department so to speak, to investigate that as they would in a legitimate shop. So the health conditions in a home I think would be something that should be a cause of great concern to everybody.

From what we have seen, they should be investigated. Of course, it is very difficult and we understand that.

I would like to bring to the committee's attention something concerning the health problem. In 1976 there was a study made in Los Angeles on the tuberculosis problem in the city of Los Angeles. This study was made among garment workers working in factories. It did not touch the homeworkers, because again they had no knowledge of where these homeworkers were, and they are not that readily available.

The problem was at that time, the result of this study was 50 percent of the people had positive reaction to the TB test. Now, it doesn't mean that everybody has TB, or that 50 percent had TB. I think everybody is aware of that. But they were suspectable to TB, and they could catch it if their resistance got to that point.

Why this study has not been continued I don't know. And why no one has made an effort to get into the homes and see what the problems are there, I don't know that either.

It just seems to me that if the factors show that kind of a reaction, 50 percent of the people have positive reactions to those tests, what would happen if you got into the homes, where there are no health conditions, no observance of health conditions by any health inspectors.

I have a copy of this I would like to leave with the committee, if you would like it. This is a result of that test. You may want to look at it. As I understand the committee is not now in existence, so I don't know what they are doing about this problem.

Mr. MILLER. After they made that finding, they are no longer in existence.

Mr. GOLDBERG. Mr. Wall, you suggested strongly in your statement, as did some of the earlier witnesses, that the effect on the garment industry in California, and nationwide, would be substantial if the Secretary of Labor were to go through with this proposal to repeal the prohibition on industrial homework, and the impact would be significant on small businesses.

You are aware in his notice of proposed rule making in the Federal Register, the Secretary said just the opposite, that it is not likely to result in an annual effect on the economy of $100 million or more, and it is not likely to have a significant economic impact on a substantial number of small business entities.

I take it you take issue with that.

Mr. WALL. Yes, I do, counsel. As a matter of fact, I don't know where he got the $100 million figure. But several years ago when the industry in California, it was indicated they were doing about $2 billion annually, at that time it was estimated that $100 million worth of work was being manufactured in homes, at that point. Today I heard figures——

Mr. GOLDBERG. That is in this State several years ago?

Mr. WALL. In the State of California.

Mr. MILLER. In terms of work that would be diverted from the legitimate shops?

Mr. WALL. That is right. Today I heard figures about $4 billion for the industry, so I would suspect that the amount of homework is vastly expanded too. That that figure of $100 million has probably doubled, or more than that.

Mr. MILLER. Did you meet with the Secretary when he was out here?

Mr. WALL. Yes, I was invited the night before his meeting to attend a breakfast with the Secretary and I was there. I indicated to him that I was very disappointed in his recommendations to lift the restrictions, and I hoped he would have a change of heart and a change of mind.

Mr. MILLER. If I can ask you, because I asked the manufacturer representatives what are your views on the Secretary's suggestions that there ought to be strengthening of the penalties for violation of the Fair Labor Standards Act?

Mr. WALL. I guess I could give a little bit of history on that.

Early on, when I became an officer of our union, Mr. Chairman, I realized that although my job was to organize workers, if I could, and to improve their earnings and conditions of employment, I realized in this industry I could probably live to be several hundred years old and would never be able to accomplish that fact.

I then began to turn to other things in order to seek assistance to accomplish some of the things that we could not do. One of the things was the licensing law that has been talked about here today. I realized that we needed some assistance in order to be able to eliminate some of the conditions that were prevalent in this industry, and still are today. I don't think they are too much different. There are a number of legitimate manufacturers who try to and do pay decent wages and conditions. But it is an exploitive type industry. And I don't see anything at this stage that is going to stop it.

Yes, I think that more severe penalties ought to be imposed upon the employers of this industry caught in violation of labor laws.

Mr. MILLER. Thank you.

Thank you very much.

Mr. GALLARDO. May I volunteer one statement here. Not being in the garment industry, but my personal observation—I feel a lot of these problems arise due to the fact that the garment industry along with other areas consists of a lot of undocumented workers, people who are here from other countries, legally, and some not legally. And this is a way of life in their own country—to try to make whatever they can to make a living.

I feel there is where the employer takes advantage of this, and uses them for substandard wages and conditions. We find this throughout. Not only here. Your vehicle code, that is violated by people from other countries. If it is not enforced, what are we going to have. I feel the same way about this particular restriction.

Mr. MILLER. Thank you.

[Prepared statement of Cornelius Wall follows:]

PREPARED STATEMENT OF CORNELIUS WALL, REGIONAL DIRECTOR, WESTERN STATES REGION, INTERNATIONAL LADIES GARMENT WORKERS UNION

At the outset, let me introduce myself. My name is Cornelius Wall. I am Regional Director of the Western States Region of the International Ladies' Garment Workers' Union and a Vice President of ILGWU. I started in the women's garment industry as a presser in one of the California shops back in 1946. In more than 35 years that have elapsed since I began working in the industry, I have had full opportunity to observe and study its economic situation, as well as the impact that industrial homework, legal and illegal, has on the operations of legitimate firms that try to run their factories in a decent fashion, and the way homework activities fostered by the unscrupulous employers affect the opportunities for many workers to earn an honest living in the industry's factories. My awareness of these problems became greater after I became an officer of the ILGWU. As a business agent I studied conditions in individual firms, then, as a Manager of the San Francisco Joint Board of the ILGWU, I negotiated and administered union agreements in the San Francisco area. Finally, as Director of the Western States Region, my responsibilities embraced a larger geographic area. Thus, when I discuss industrial homework and its effect on the employment and welfare of both workers and employers, I can talk with the authority and experience of the many years that I have devoted to study, observation, and contract enforcement.

As all of you are aware, the Administrator of the Wage and Hour Division has banned industrial homework in seven industries where such activity resulted in obnoxious violations of the wage-hour law. This included, among others, the women's apparel industry, knitted outerwear, and embroideries; all branches of the industry in which our members are trying to earn a living. The reasons for banning industrial homework were spelled out extensively in the findings of fact and opinions issued by the Administrator at the time he issued the particular regulations. I do not need to spell them out. They are a matter of record and are well known to your Committee and your Staff. Suffice to say, that the findings indicated that homework was much too extensive in these fields, that its presence was accompanied by massive violations of the minimum wage, and of the overtime and oppressive child labor provisions of the Fair Labor Standards Act. On reviewing all the facts and the consequences of such violations, the Administrator concluded that homework had to be eliminated; its existence could be justified only where there were handicapped individuals who could not leave their homes or persons who could not leave their homes because they had to take care of handicapped individuals. Furthermore, this had to be done to safeguard the minimum wages recommended at the time by the various industry committees.

The effect of these regulations was to significantly diminish homework operations in the seven restricted industries, including those branches in which the ILGWU had members. That this was indeed accomplished can be seen from a homework survey conducted by the Wage and Hour Division in 1959. Only some 2500 industrial homeworkers were found in the seven regulated industries, compared with some 20,000 homeworkers spread over the rest of American industry. It should be borne in mind that many of the 2500 workers in restricted industries fell into the category of handicapped individuals who could be employed as industrial homeworkers. Thus, for a large number of years since 1940, industrial homework in the seven restricted industries was significantly diminished, though at no time was it fully eliminated.

What has happened in the last decade, however, is that gradually homework began to increase in the restricted industries. In part this was due to the fact that people were unaware or had forgotten that homework is not allowed in these industries. In part it was due to the inadequate enforcement activities of the Wage and Hour Division, which, at best, inspected but two or three per cent of covered establishments. Thus, only occasionally did the Wage and Hour Division run across the unreported illegal cases of industrial homework. Increased immigration from countries where homework existed, also brought some of it over to this country. Thus, these and other causes generated anew the problem of industrial homework and its competition with fair employers and the employment they offered to their workers.

In our own state of California we recognized this condition rather early. While we do have a homework limitation law on our state statute books, it was not very effective, at first. Once the insufficiency of the California legislation was recognized, the law was significantly strengthened, homework was then by and large prohibited, and companies giving out homework became subject to increased penalties. This was highly desirable to supplement the rules and regulations applicable to the seven restricted industries under the Fair Labor Standards Act.

It was therefore shocking to discover that early in May of this year, Secretary of Labor Raymond Donovan issued a proposal to remove the regulations limiting industrial homework in the industries where it constituted a major problem and threatened the minimum wage and its enforcement. I have reference to his suggestion to ban the regulations contained in Chapter 29, part 530, of the Code of Federal Regulations. It was all the more shocking because the particular proposal failed to examine in detail the results of four days of hearings that were held in Burlington, Vermont and Washington, D.C. on some aspects of the regulations. Contrary to the usual practice, Secretary Donovan failed to examine the evidence and therefore arrived at conclusions not justified by the facts in the case. The overall views and evidence presented by spokesmen for industry, labor, and by several state agencies that had to deal with industrial homework was strongly and unanimously in favor of maintaining the existing restrictions, and for their expansion to branches of industry in which no current restrictions exist.

The impact of the Secretary's proposal on the minimum wage provisions of the Act, were he to lift the ban on industrial homework in the seven regulated industries, would be to magnify violations of law, and make it increasingly difficult for fair employers, including employers under contract with our union, to operate their factories and to meet unfair competition emanating from those firms that choose to rely on homeworkers to get out their production. Secretary Donovan raised a question regarding the impact of his proposal on small businesses. He obviously is not aware that the typical firm in our industries and others where homework employment was banned is small business. In our case, most companies employ less than 60 people. Thus, when I am referring to the negative impact of the proposed restoration of industrial homework, I can only speak of its effect on small business, for this is what our industry consists of. The effect therefore would be a massive loss of factory jobs, something that I don't even want to contemplate, something that would affect workers who have toiled over many years both for improvements in the legal minimum wage structure as well in securing better economic and working conditions in the factories where they work.

I am offering these views, based on my personal and intimate knowledge and experience with the operations of firms in our industry. I recognize that publicly Secretary Donovan indicated, both in the East, as well as more recently on this Coast, his desire to strengthen the enforcement of the Wage and Hour Law. Let us assume that these are his true hopes and intentions. However, his actions both in stripping the size of the enforcement force of the Department of Labor, as well as his proposed action in the case of industrial homework, can only have the opposite effect from that which he professes to advance. Violations will grow. Just as in the past, industrial homeworkers in these industries will not increase their reports of minimum wage, overtime or child labor violations "without fear of losing their employment." Their fears would remain the same as they are now. Take the case of those areas where homework continues to exist but which are not regulated as is the case in the seven industries. Neither the situation which existed before adoption of the present regulations in the forties or the present homework situation outside the regulated industries gives any hope that Secretary Donovan's proposals are on the right track. Just the contrary ....

My experience, extensive as it is, fully supports the findings of the report of the Minimum Wage Study Commission that was appointed after the Fair Labor Standards Amendments of 1977 were adopted by the Congress of the United States. This Commission has devoted the last three years to the examination of the social, political and economic ramifications of the Wage and Hour Law. Let me read to you a portion of their report that deals with industrial homework; more specifically, with section 11(d) of the Wage and Hour Law which was adopted by the Congress in 1949 to give additional powers to the Wage and Hour Administrator to regulate industrial homework outside the seven restricted industries and to ratify the then existing homework regulations and incorporate them into the law. The Commission had this to say, and I quote:

> "The Commission recommends that the section 11(d) homeworker certification provisions be retained. The original purpose of this provision was to reinforce the authority of the Department of Labor to control effectively the production processes associated with industrial homework and to curtail the development of exploitive labor practices among establishments using this method of production. The Commission's action is taken to reaffirm its commitment to these goals and in recognition that continued vigilance is required to insure that substandard wages and working conditions do not again become a condition of employment for workers with few job alternatives."

I am in full accord with the Commission's findings and recommendations. They clearly go counter to the proposal offered by the Secretary of Labor in his May 5 notice.

Let me conclude:

I strongly urge your Committee to recommend to the Secretary of Labor that he should reconsider his proposal to wipe out homework regulations. He should retain them and, if anything, extend the rules to other areas where homework might have increased and thus threatens the payment of the legal minimum wage. The impact of his proposal on the operations of the seven industries is far more extensive than he has assumed. The firms that will be most hurt by his proposal are the very firms that apparently cause him concern -- I am talking of small businesses which are typical in the seven restricted industries, as well as their employees. It is unfortunate that I have to criticize Secretary Donovan for his lack of foresight, but his proposal to abolish the homework restrictions leaves me without an alternative.

REPORT OF THE MINIMUM WAGE STUDY COMMISSION, MAY 1981

MINIMUM WAGE STUDY COMMISSION

James G. O'Hara, Chairman, Attorney at Law, Patton, Boggs & Blow, Washington, D.C. Appointed by the Secretary of Health, Education, and Welfare.

William D. Byrum, Grain and Pork Producer, Onondaga, Michigan. Appointed by the Secretary of Agriculture.

Jay H. Foreman,[1] International Vice President, Executive Assistant to the President, United Food & Commercial Workers International Union, Washington, D.C. Appointed by the Secretary of Labor.

S. Warne Robinson, Chairman of the Board, G. C. Murphy Company, McKeesport, Pennsylvania. Appointed by the Secretary of Commerce.

Clara F. Schloss, Consultant, AFL-CIO, Washington, D.C. Appointed by the Secretary of Labor.

Michael L. Wachter, Professor of Economics, University of Pennsylvania, Philadelphia, Pennsylvania. Appointed by the Secretary of Commerce.

Phyllis Ann Wallace, Professor of Economics, Sloane School of Business, Massachusetts Institute of Technology, Cambridge, Massachusetts. Appointed by the Secretary of Health, Education, and Welfare.

Sandra L. Willett, Executive Vice President, National Consumers League, Washington, D.C. Appointed by the Secretary of Agriculture.

INDUSTRIAL HOMEWORKER CERTIFICATES—SECTION 11(D) (ENFORCEMENT OF MINIMUM WAGE PROVISIONS)

Regulations governing the issuance of homework certificates remain essentially unaltered from those developed in 1942 after hearings held by the Department of Labor. Homework continues to be prohibited in seven industries without the appropriate certificates. These industries are: (1) women's apparel, (2) jewelry manufacturing, (3) knitted outerwear, (4) gloves and mittens, (5) button and buckle manufacture, (6) handkerchief manufacture, and (7) embroidery. Jewelry manufacture by Pueblo, Navajo, and Hopi Indians on their reservations is excluded from the homework prohibitions.

Because of the stringent provisions governing the certificates, they are issued only if homework prohibition results in "unusual hardship" to the homeworker. The care of infant children at home has never been considered an "unusual hardship" and therefore is not a sufficient reason for issuing certificates.

Homework is permitted without certification if supervised under a state-approved vocational rehabilitation program or sheltered workshop and is permitted in the private sector without prior certification in all areas except the seven specifically identified in the regulations. All employers, however, are required to submit employment records using the designed Homeworker Handbook. These seven industries were initially targeted because prevailing technologies were highly conducive to the development of exploitive wages and working conditions.

Although the original intent of the homework regulations was to encourage the orderly elimination of industrial homework, a small number of certificates continue to be issued. Only 121 were issued in fiscal year 1980, two thirds for the home manufacture of women's apparel, knitted outerwear, and gloves and mittens. This compares with an estimated 140,000 certificates issued in 1940.

The Commission recommends that the section 11(d) homeworker certification provision be retained. The original purpose of this provision was to reinforce the authority of the Department of Labor to control effectively the production processes associated with industrial homework and to curtail the development of exploitive labor practices among establishments using this method of production. The Commission's action is taken to reaffirm its commitment to these goals and in recognition that continued vigilance is required to insure that substandard wages and working conditions do not again become a condition of employment for workers with few job alternatives.

Mr. MILLER. Next we will hear from Joseph Razo, the director of the concentrated enforcement program and from Albert Reyff, who is accompanying Mr. Razo.

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[1] Succeeded Gerald M. Feder resigned May 1979.

Welcome to the committee. Proceed in whatever manner you would like. You have been widely quoted, so we look forward to your testimony.

STATEMENT OF JOSEPH RAZO, DIRECTOR, CONCENTRATED ENFORCEMENT PROGRAM, CALIFORNIA STATE DEPARTMENT OF LABOR AND ALBERT REYFF, ACTING STATE LABOR COMMISSIONER, STATE OF CALIFORNIA

Mr. **Reyff**. Mr. Chairman, my name is Albert Reyff, the acting State labor commissioner for the State of California. With me is Joe Razo, the director of our concentrated enforcement program, which is part of the division of labor standards enforcement.

Governor Brown and the director of industrial relations, Don Vial, and myself have all urged Secretary of Labor Donovan to abandon his proposal to rescind the homework ban at the Federal level.

Although we fully intend to continue our vigorous enforcement in California, we feel that the proposal to do away with the Federal regulation merely serves to weaken our program, and to deny the vital protection necessary to the marginal workers in the apparel industry.

The counsel earlier in the proceedings mentioned the lack of recordkeeping at the homework level. We in California are very much aware of the so-called subterranean economy, where a substantial portion of workers in all industries, particularly the homework industry, are paid in cash with no tax deductions, no benefits to workers, and believe me, all of us taxpayers will have to pick up the burden later on when these people demand what they are entitled to under the law.

California last year, as proposed by Governor Brown, passed a law that permits the labor commissioner to assess civil penalties against employers who pay in cash and do not keep adequate records of the required deductions and do not give the workers statements of those deductions. This has been a very successful law and we have assessed over a million dollars so far this year in penalties.

We do recognize some form of industrial homework. For example, last year 41 licenses were issued for homework, 307 permits were issued to homeworkers. There is a fee involved, and $32,000 was collected in fees.

Homework involving wearing apparel is strictly prohibited in California, and we urge you, Congressman Miller, to use whatever authority you have at the congressional level to prevail on Secretary Donovan.

With me is Joe Razo, director of our program, who will explain what we have been doing in the apparel industry and what we intend to do.

Mr. **Razo**. Our program began on April 15, 1970. Over the last 3 years we have filed about 175 criminal prosecutions, 26 primarily against homeworkers.

The individual who we are interested in is not so much the homeworker, but rather the employer who is supplying the homeworker.

I have photos here that indicate this. There are primarily two types of homeworkers. This first type are employees who generally work as employees in the regular industry, and who after their normal working hours, in order to make things meet, will go and take some clothes from the shops home.

They carry them in whatever container they have. They receive assistance from employees in the various shops.

Homework cuts across all ethnic lines, as you can see here.

Here is one of my investigators stopping a woman and confiscating the homework. Individuals who did not have vehicles but had access to public transportation would also carry these things home.

Mr. MILLER. You indicate they carry this work home from shops.

Mr. RAZO. From shops.

Mr. MILLER. Describe for a moment the employer. Are we talking here about a person who is intentionally violating the law? Are we talking about a person here who is obeying the law in the operation of his shop, but silently condones the taking home of the work? What is the situation in terms of the base employer, if you will?

Mr. RAZO. I think from the base employer, originally in 1978 the violations that existed in terms of homework existed on a smaller scale—whereas individuals would take 5, 10, 15 pieces of clothing home to sew. The other type of homework is where you have a garage type situation that involves 60 to 70 employees.

Mr. MILLER. What I am concerned with is when this individual leaves the factory, the place of employment, with additional garments to sew at home, is that being viewed simply as this is an industrious person who wants to earn additional money, and is that person being paid the legal wage for their work in the factory?

Mr. RAZO. No. We have yet to find a homeworker in our 3 years of enforcement of this program who is paid the minimum wage.

Mr. MILLER. The person taking it home from the factory, when they are working in the factory——

Mr. RAZO. They are also not being paid the minimum wage.

Mr. MILLER. In most cases, all cases?

Mr. RAZO. We have inspected 2,685 shops from April 15, 1978, through January of this year, and we found that 75.3 percent of those individuals were not paid the minimum wage and overtime.

Mr. MILLER. Those inspections were initiated how?

Mr. RAZO. It is through complaint or what we call selective inspections. We just walk in and through consent we proceed with our inspection.

Mr. MILLER. I guess what I am trying to determine is, are you able to define distinctions within the industry as to employment practices, as to people who obey the law 100 percent, 75 percent, 30 percent? Are these kinds of distinctions available?

Mr. REYFF. I think the point you are making, Congressman, was mentioned by Ms. Wolin when she testified workers at the end of the day would take work home to make additional money because the piece work rates were so low that they were not making a livable wage. The problem here is that California has a ban against overtime in excess of 8 hours without paying one and a half times the regular rate of pay. Here you have workers who will take the work home and work at the regular rate at their home, thus saving the employer some money. I think that is what you are getting at.

Mr. **Miller**. So you can have the possibility that the employer who employs this person in a factory is paying that person the legal wage for 8 hours, but not paying the legal wage for the homework?

Mr. **Reyff**. That is possible, but in many cases unlikely possible.

Mr. **Miller**. Is anybody paying anybody the legal wage in this industry?

Mr. **Razo**. Yes, about one-quarter of the contractors—usually your larger contractors. The problems that exist in this industry are really twofold in terms of the contractor level. One is the fact that you have a very poor pricing system that you have a surplus of contractors, and so basically the manufacturing community has unlike other industries, where you submit a formal bid, and based on product quality, the lowest bid usually gets the item.

Here, because of the fact that there is a surplus of contractors, manufacturers basically dictate to contractors what the pricing structure will be, and it is a take-it-or-leave-it—if you don't do it, we will get some other contractor to do it.

And as long as there is a surplus of contractors, that type of problem is going to exist.

Mr. **Miller**. Let me raise a question there. And it goes specifically to this issue of the results if you were to lift the ban.

It was suggested in our hearings in Washington that—perhaps the contractors would like to testify to this in the next panel—it was suggested that the Department of Labor, for the industry, could do a series of time and motion studies in order to come up with exactly how long it was required for a person to sew a sleeve or a collar or what have you. They would then be able to provide for uniform pricing, and therefore everybody would know that that is the price that you had to arrive at so you were not paying less than the minimum wage.

Does that sound possible to you?

Mr. **Razo**. No, there is no such thing as a uniform pricing.

Mr. **Miller**. You think the Department of Labor could create it?

Mr. **Razo**. No. And I don't think they should, either. I think they can certainly give seminars in terms of how to price a garment, bring industry officials or consultants to assist contractors. But I think it is ludicrous to think that a contractor who has 15 to 20 employees is going to be charging the same amount as a contractor who has 60 employees, and the contractor who has 60 employees is turning out maybe a greater volume, has more experienced people.

There are numerous variables that have to be considered in order to have uniform pricing.

Mr. **Reyff**. Our new California law that was authored by Senator Montoya does provide for arbitration between the contractor and the manufacturer if a contractor feels that the agreed contract price does not permit the contractor to meet the basic State and Federal wage requirements. That is a feature of the law. It is not an arbitration between labor and management. It is between the contractor and the manufacturer.

Mr. **Razo**. In dealing with the pricing structure, if I were a manufacturer, the first thing that I would ask a contractor is, How many employees do you have? I would estimate how long it is going to take him to sew my garments, figure out his labor cost. Even if just labor costs are not met on the price that he accepted from me, I would not do business with that individual, because that individual doesn't know what the heck he is doing.

But manufacturers do not inquire into such matters. As long as the work is being done and delivered on time, at least recently, that has been the extent of their responsibility.

More recently they are offering better prices to specific contractors, and I think the Montoya bill has forced that.

Mr. MILLER. Under the California law, are you allowed to confiscate?

Mr. RAZO. Confiscation probably is the best weapon that we have in California.

Mr. MILLER. That is sanctioned under the law in California?

Mr. RAZO. That is correct. Both in a homework situation under the Montoya legislation and that is because it halts the production system, so that a contractor cannot deliver to the manufacturer, and the manufacturer in turn cannot deliver to the retailer.

Mr. MILLER. Mr. Goldberg?

Mr. GOLDBERG. You said that in the 3 years that you have been incorporated in the concentrated enforcement program you have conducted a number of inspections, based on complaints, and a number of them are based on targeting of your resources.

I understand that you have in fact conducted inspections or investigations of homework.

Mr. RAZO. That is correct.

Mr. GOLDBERG. Is that also done in response to your own special targeting or just as a result of complaints?

Mr. RAZO. No; that is done in response to our own targeting. There are numerous ways that we can find out when, if, and where homework is being done. Certainly one of the ways is through complaints from neighbors, through educating the general public as to what the homework laws are. And they in turn call us up.

Second, from various contractors associations. At times they have been very helpful in referring us to specific alleged homework incidents that are occurring, because most contractors recognize that it creates an atmosphere of unfair competition for them.

Third is working with local municipalities, whether it be Los Angeles City, city of commerce, city of industry, that when they do code enforcement or other types of enforcement work——

Mr. GOLDBERG. You mean like Fire Code enforcement?

Mr. RAZO. That is right. Then they call us and say they saw three or four machines in the garage or inside the home.

Mr. GOLDBERG. You did not mention in that list complaints from the homeworkers themselves. Is there a source of information?

Mr. RAZO. Well, we have only received in 3 years one complaint from a homeworker. And that was because that homeworker did not get paid at all.

Mr. GOLDBERG. At all?

Mr. RAZO. At all. Usually they will not complain if they receive partial payment.

Mr. GOLDBERG. You have testified earlier—you testified at the hearing which the Secretary of Labor had started out in Vermont and ended up in Washington—that you have never seen a homeworker in your area of jurisdiction that has ever earned the minimum wage.

Mr. **Razo**. That is correct, and I also feel that homeworkers will not testify due to the fact, one, that they have illegal immigration status, or at least a majority of them; second, many of them are recently arrived immigrants who are not fluent in English. There are very few governmental offices that I have seen around that have bilingual staff that are able to communicate with recently arrived immigrants or undocumented workers.

These people also live in politically powerless communities, whether it be the Hispanic community, the Chinese community, the Armenian community, and we have numerous Armenians in the industry. Because of the fact that the community is politically powerless, they have very poor transportation systems. So it is not like they can walk two or three blocks and get a bus. They can walk 2 or 3 miles to a regular bus line. And also they do not have their own private transportation, or have access to a vehicle, to complain to a regular office.

So in terms of Secretary Donovan's statement that lifting the ban would encourage homeworkers to complain, I would invite him to go out with us on some of our homework visitations.

Mr. **Miller**. So it is not enough in your opinion, to simply remove the individual status as an illegal homeworker to get this individual to report a violation, because they have additional status problems in the majority of cases, and that is their legal status in the country.

Mr. **Razo**. That is correct, along with language problems.

Mr. **Miller**. Obviously to hassle over the differences between the minimum wage and what they are getting paid does not justify their risking that status.

Mr. **Razo**. That is right, and many of them also come from countries where there are no labor standards whatsoever or where they have had to deal with corrupt governmental officials. And any encounter they had with governmental officials resulted in a payoff somewhere. There are just numerous factors that would not encourage them to complain.

Mr. **Miller**. If they stay here long enough, with this administration, they may be in another country where there are no labor standards.

Mr. **Razo**. That is correct.

Mr. **Reyff**. That is what we are afraid of, Congressman.

Mr. **Razo**. The immediate impact that lifting of the ban would have on the State of California is that, of course, we still have a State law, and our State law would still be in effect.

But there are also numerous contractors that when the lifting of the ban was proposed, contractors felt that they could now give homework. And at least four or five of them called me up and said the first thing I am going to do is just work out of my home, use the telephone, use my van, and deliver homework to various persons around so that I have no overhead costs, no capital investments, take very little of the risk.

So it is a matter of ignorance on the part of some specific contractors who do not know there are two laws involved, one a State and one a Federal law. So we would have some impact.

Mr. **Miller**. In the majority of the homework situations it is a pickup and delivery operation by the contractor?

Mr. **Razo**. No; it is a combination of both. It is the worker comes in and picks it up by whatever means available, or else if it is a much more sophisticated operation, deliveries are done.

Mr. **Miller**. Has the State been able to do any estimates on what the drain is in terms of employer-employee contributions to the various legally required funds?

Mr. **Razo**. No; we have not. We don't know how many workers are out there.

Mr. **Miller**. John?

Mr. **Lawrence**. Mr. Razo, in May you were quoted in the Los Angeles Herald-Examiner as saying that the short-term impact of lifting the ban on homework would lead to the exploitation of the work force.

Would you say that—and you partly answered this in your earlier remarks—that lifting the Federal ban on homework will increase the number of people doing homework?

Mr. **Razo**. Oh, definitely. And that is again due to lack of knowledge among some contractors that there are two specific laws involved, one a State law and one a Federal law. And that even if the Federal ban is lifted, that the State law would remain in effect. Some contractors are under the impression that if the Federal ban is lifted, then there is approval to engaging in homework.

The other side of the coin is that it is just not the exploitation of the worker that results from homework. To me the most important aspect is the impact of unfair competition on the small business person, such as a contractor that has more than 49 employees.

There is absolutely no way that a legitimate contractor can compete against a homeworker. So it's that contractor that winds up resorting and engaging in homework, or else goes bankrupt. And our estimate from the small contractors, and these are contractors that have fewer than 25 employees, is that 30 percent of them went bankrupt or just folded their businesses on an annual basis.

Mr. **Lawrence**. Despite your obvious zeal in enforcing the law, which is your responsibility in this State, you obviously have some practical limitations on how well you can do it.

How many enforcement people do you have working for you?

Mr. **Razo**. I have a total of about 63 enforcement persons in my program. I have three offices, one here in Los Angeles, one close to the San Francisco area, and one in Orange County. The division also has 26 regular offices throughout the State. Some of the persons in those offices are field staff.

The approach that we take in this program is that governmental officials or governmental agencies will never have sufficient resources for whatever reasons. And we certainly are not asking for more enforcement persons. In fact, we are discouraging additional personnel. Our approach is we feel an innovative approach, that the public is responsible for many of the laws that are being violated, it's because of ignorance or lack of interest.

What we have attemped to do in this program is to engage the public to become an extension of our agency so that they see that they play a role in the enforcement of these laws.

Certainly, with 80 percent of the employees in the garment industry being females, women's rights advocates play a role. Religious organizations, because of the ethical and moral issues involved, are also actively involved in referring complaints to us or in educating from the pulpit.

We also know that contractors' associations and manufacturers' associations, at least the legitimate aspect of the industry, and there are more and more surfacing who want to have a voice into how this industry is being run, and we are encouraging that. So we are very hopeful with the results we have seen over the last 6 months.

Mr. **Miller**. Let me make sure I properly understand you.

I appreciate what you are saying. But in saying that, are you suggesting that there is sufficient enforcement personnel—and I would ask you to comment—both Federal and State, to properly monitor the law, or are you suggesting that that is not the case, but you would also like the help of these individuals?

Mr. **Razo**. I am saying we are already receiving the help of those individuals, and that from a governmental point of view, there will never be adequate resources from an enforcement point of view on homework.

Mr. **Lawrence**. Would it help your enforcement activities if the Federal Government were to lift the homework ban?

Mr. **Razo**. No; it would not.

Mr. **Lawrence**. Obviously, you would lose the support of the Department of Labor in enforcing the Federal counterpart to the State role.

Mr. **Razo**. I think we are already being impacted by the cuts that have been proposed on the Department of Labor.

Mr. **Lawrence**. You are being impacted?

Mr. **Razo**. Yes.

Mr. **Lawrence**. I want to ask one more question. That is, what is the annual budget of your agency? Obviously, some of the reduction in Federal staff is because of the administration's concern that we reduce Government spending, which we all share. But I wonder what it costs to run your specific operation.

Mr. **Razo**. The budget for our staff, when we had 59 employees, was $1.2 million. That has been augmented. We will be receiving 11 new positions beginning July 1.

Mr. **Lawrence**. Have you had any estimate on how much money you will have recovered during the period that your office has existed for workers in lost wages, or in other financial benefits?

Mr. **Razo**. We recovered close to $6 million just in wages, minimum wages, and overtime, over the 2½-year period. In addition to that, it is close to $2 million in workers compensation fines assessed, and I believe close to $1 million collected. In child labor, the figure is close to $1 million assessed in fines, and with half a million collected.

Mr. **Miller**. Are you able to return that to the workers or what is the disposition of those funds?

Mr. RAZO. We have a unique problem here in that we are able to locate about 60 percent of the work force. The work force is not really a transient work force. It is a transient work force in the sense that there is horizontal mobility, that they move from shop to shop. But they generally stay in the industry. It is not transient in the sense that they move back to the foreign country from which they came. So we are able to locate 60 percent of those individuals.

With regards to the wages for the other 40 percent, we hold those wages in our office for 6 months and then we send them to headquarters, which by law is required to hold them for 7 years. But that has now been changed to 4 years, and then after that, it becomes available to the State treasury.

Mr. MILLER. In fact, I guess it could be argued on the figures you have just given us, in terms of cost of operation which you have recovered, that it is a fairly cost-efficient operation. You are obviously paying for more than the cost of the enforcement proceedings.

Mr. RAZO. That is correct. Initially this program was a demonstration project funded by Federal funds for a 9-month period. Now it is a regular part of the State budget.

Mr. MILLER. If my recollection is correct, at the Washington hearings, I think it was Congressman Burton from San Francisco also was able to take the Labor Department through and show them that in fact their potential or actual recoveries were far in excess of the cost of the enforcement operations for the Federal levels, even prior to the cutbacks that they were anticipating.

Mr. RAZO. The program is very cost effective.

Mr. MILLER. Mr. Goldberg?

Mr. GOLDBERG. I would like to go into a little bit for the record, the distinction between the provisions of the California State law and the current provisions of the Federal law with respect to what is done with back pay money that is collected from employers by the law enforcement agency in a situation where the employee cannot be located.

You indicate first of all that you are able to locate about 20 percent?

Mr. RAZO. We are able to locate 60 percent.

Mr. GOLDBERG. Do you know offhand what the Federal Wage and Hour Administration's record is with respect to this?

Mr. REYFF. I think the primary difference is that in California we actually collect the wages and pay it out to the workers. In many cases the Federal Government assesses the wages and in not all cases collects the money.

Now, under California law, the money that is collected by the labor commissioner and in those cases where the worker cannot be located, that money is placed in what is known as the uncollected wage fund, and it stays there for a period of time and then goes into the general fund.

There is a bill going through the California legislature now that after 4 years those moneys that have not been paid out will be used to support the California Industrial Welfare Commission which sets the wage and working standard laws in California.

We expect this bill to pass.

Any penalties that we assess in connection with the enforcement of our labor laws of course go into the general fund. But there is absolutely no charge to the worker. We collect the wages, pay it out to the worker. There is no problem as to whether they have legal status in the country. We accept wage claims from any worker. Statewide, outside of Joe's program, the State collects about $18 to $19 million in unpaid wages each year.

Of course, outside of the garment industry, I would say better than 90 percent of the wages are paid out to the workers, with maybe less than 10 percent unlocated.

Mr. **Miller**. Thank you very much for your testimony.

I hope the Department of Labor will attempt to improve your ability to enforce the law.

Mr. **Miller**. Next we will hear from a panel of garment industry contractors: Richard Arciniega, Garment Contractors' Association, Los Angeles, Calif.; Wayne Jung, Chinese Garment Contractors' Association, Los Angeles, Calif.; H. Young Kim, Korean-American Garment Industries, Los Angeles, Calif.; Gonzalo Egas, United Clothing Contractors' Association, Los Angeles, Calif.

You are welcome to proceed in any manner you would like.

If you have a formal written statement we will put it into the record in its complete form.

You are welcome to summarize it, if you like.

If you would identify yourselves for the reporter, please.

STATEMENTS OF RICARDO ARCINIEGA, PRESIDENT, GARMENT CONTRACTORS' ASSOCIATION, LOS ANGELES, CALIF.; WAYNE JUNG, VICE PRESIDENT, CHINESE GARMENT CONTRACTORS' ASSOCIATION, LOS ANGELES, CALIF.; H. YOUNG KIM, PRESIDENT, KOREAN-AMERICAN GARMENT INDUSTRIES, LOS ANGELES, CALIF.; GONZALO EGAS, UNITED CLOTHING CONTRACTORS' ASSOCIATION, LOS ANGELES, CALIF.

Mr. **Arciniega**. I am Ricardo Arciniega, president of the Garment Contractors' Association of southern California.

I represent approximately 162 contractors at this time, consisting of many ethnic backgrounds in the Los Angeles area, comprising approximately 12,000 employees.

I too am also a member of the recently formed National Coalition of Apparel Industries Committee on Labor, on the behest of Labor Secretary Donovan.

Gentlemen, I am extremely glad to have this opportunity to testify before you on this matter of homework of apparel items because it so much affects our members.

Our association is totally against the lifting of the homework ban, but is in sympathy with those adjustments that possibly may be afforded for those industries in Vermont and elsewhere in the Nation.

Lifting of the ban opens up an entire new opportunity for those unscrupulous contracts and manufacturers to exploit their workers, plus taking away from our association members who have spent thousands and thousands of dollars in equipment and locations, not to mention the long hard years spent in putting together their businesses and providing employment for their workers who are protected with workmen's compensation and other benefits.

Having already had to compete with Third World countries on items assembled offshore, I do not find it in context of fair competition to let this homework ban be lifted. What has decimated the show industry in effect in time will affect the apparel trade.

We have a work ban here in California that is not like in the rest of the United States, whereby if the ban is lifted, manufacturers as well as contractors can go outside the State lines and provide work for themselves without the work ban in effect.

Mr. **Miller**. Do you think that that is realistic, if I may interrupt you?

Mr. **Arciniega**. Very likely. There is a lot of work being done outside of California that comes into California partly assembled.

In quoting or making mention of Merle Linda's comment on how children would be affected, we too find that the conditions that would prevail in the homework place, items such as electrical outlets for the sewing machines, would be detrimental to the young kids.

I envision further that possibly the items produced on the homework site might affect incoming generations, those children that are involved in that particular environment.

As far as we are involved at the present time in the South, involved in the cotton dust, or black lung diseases, it could be likely this might happen in the whole work site. We have a greater problem here, gentlemen, we are striking regulating a situation that has been in effect a great deal of time. It did not start just yesterday.

I address myself to the problem of border enforcement. There have been some comments in the media in the past months that because of the cutbacks in the budget, vehicles stand idle at border sites without gasoline to run them with, to help guard our 6,000-mile border.

That is one area we must look at very critically, to try and offset some of the problems we have been having here locally with immigrant labor being exploited.

Communication of the laws in the many languages at this point in time are being put together by the Coalition of Apparel Industries in California in conjunction with the Fashion Institute.

We have been as association members here seated at the table with me working in trying to interpret the laws in each of our own languages, to convey to our workers exactly what their rights in working in the apparel trade are.

We are touching only the tip of the iceberg, gentlemen. There are still the domestics, the hospitals, the restaurants yet to be addressed that are involved in possible exploitation of their undocumented or immigrant workers.

We are presently, or I am presently involved recently, within the last 10 days, of getting together with these gentlemen seated at the table with me in forming an umbrella of associations here in the local area to try to address our situation much more graphically.

Again, I thank you for the opportunity to testify before you. I am glad that our association's main theme for the past few months, "Dialogue", has been picked up by our local community as well as in Washington.

I am sure we will go a lot further in resolving a great deal of our problem.

Mr. **Miller**. Thank you.

Mr. Egas?

Mr. **Egas**. I am Gonzalo Egas. I am a member of the California Regional Committee, part of the National Coalition of Apparel Industries, recently formed in California.

United Clothing Contractors' Association is thoroughly opposed to the lifting of the ban on the homework for a number of reasons.

In the homework situation, it is totally impossible to monitor minimum wage violations. It would be extremely unfair for legitimate operations. It could be impossible to control the health situation, whereby a number of people with communicable diseases would be working with garments that are going to be sold to the public.

Also, it would be impossible to monitor the child labor situation or violations.

We have talked about a number of aspects here related to this problem, to the homework. It would be a rather simplistic way to look at it just as a means of work for poor, illiterate, undocumented workers.

We have failed so far to mention that also among the homeworkers you have at times the welfare recipient who wants to make some money on the side regardless of the conditions. We know of cases where people are receiving welfare assistance of all kinds, and they also work for different contractors.

Now, these situations have been sort of proliferated by the fact that we have an outrageously unfair pricing situation here in California, due to the fact that it is very easy, very simple to get a business tax permit from city hall, $17 to $35 at the most, and then a person is in business as a contractor, not knowing the law or the basics about the garment trade.

So those people are being taken advantage of by different manufacturers who knowingly give that work specifically to illegal operators. Some people claim ignorance or this and that. But I think by and large the great majority of contractors have knowledge of pricing techniques, even though the price situation is completely unbalanced.

We feel that having now the Montoya bill, S. 545, will enable the labor commissioners' people to enforce the law and eliminate the illegitimate operators, whether they be contractors or manufacturers.

To advocate the lifting of the ban for the homework would be completely counterproductive and detrimental to the welfare and well being of workers in the industry.

Thank you.

Mr. **Miller**. Thank you.

Mr. Kim?

Mr. **Kim**. I am H. Young Kim, president of the Korean-American Garment Industries Association.

We have about 250 members in our association. We have over 17,000 employees.

When I heard the Secretary of Labor announce that the ban is going to be lifted, I thought that he had the intention to help--I don't know about the others—help contractors, because lifting the ban would help contractors very much for three reasons.

One, as I state, the group who does the homework, I can divide three groups. One group who has more than one machine at a garage or in the home and doing some sewing, with ability of how to sew. Some are making minimum. But those groups, they are making more than minimum. And they think it is very convenient, doing work at home, they don't have to take abuse or they can eliminate those problems.

Another group there is a group who are doing the homework because they have to stay home to take care of their babies. In other words, even if they want to go to work they cannot leave the home. In other words, they must stay home. But they would rather make some money instead of sitting home all day doing nothing, making no money. This is another group. But most of those do not have very good ability of making garments. In other words, they are not making quite minimum. So that is the second group.

There is a third group who does the homework. They are not supposed to work. In other words, they are undocumented people. They are afraid of going to the factory and they are afraid to be caught by the Immigration Office people. So these are the people staying home.

Now, the reason I said this homework, lifting the ban, would help contractors, one, we don't have to pay the minimum wages. No matter how long they work, there is one set price that we can pay them, and that is it.

We don't care how long it is going to take to sew that one unit, so we are not losing any money. This is why we are making money. Plus we don't have to pay workmen's compensation, which is about 2.2 of the wages. So in that way we can save some money again.

We don't have to be worried about the enforcement people coming to the factory and investigating all kinds of child labor, things like that. So we don't have to worry about that either.

So those things are really helping contractors.

But I have another three reasons why we are opposed for this homework. I have three reasons plus one serious reason. I want to start with No. 3.

The third reason why we oppose this homework is the legitimate contractors must close down the factory. We don't need a big shop anymore. We don't need the people. We don't need the machines. What we need is just maybe a small office, and with some trucks to make a delivery and a pickup. And this is what we have to do. So we don't have to worry about the employees coming to the shop. That is the third reason.

The second, the nonlegitimate contractors might want to change their business from sewing contractors to transportation businesses. When we do the homework, what we have to do is instead of becoming an owner of the company, I think we should become the dispatcher.

The No. 1 truck, you go to a certain area, deliver and pick up, No. 2, you go to Arizona, No. 3, you go to San Bernadino. So I don't think there are too many people like to start the transportation business instead of sewing contracting. That was No. 2.

No. 1, which is most important to me, it decreases our income, it decreases the payment, as long as homework is going on, there is so many competitions, those people willing to receive any money that we want to pay, still they can make money, still it is better than doing nothing at home.

So here is one contractor can make this one garment with such a price, then the next neighbor says, I can take less than that. So the contractor, we compete with lower and lower prices.

Finally, the manufacturer is giving us a lower price too. Then very soon our price is going way down. Very soon there will be no business. Very soon we have to bankrupt and change our business.

The last serious reason I would like to state is when we let the homeworkers do homework this would cause very serious problems such as sickness, because homework has no time limitation. They can do whenever they want to, 8 hours, 10 hours, 11, 12 hours. They can do any time they want to. So this way they have seen many people who are doing homework getting weaker and weaker physically. And this is really a very serious problem.

Thank you.

Mr. MILLER. Thank you.

Mr. Jung?

Mr. JUNG. Thank you. I am Wayne Jung, vice president of Chinese Garment Contractors' Association.

The three of my friends have already spoken well on this. I only want to talk about the problem of the money. That is the pricing.

Five years ago we get a garment, same style, exactly the same like my shirt, $2. Five years later, today, we get the same thing, $2. The manufacturer is talking about education; what it is all about; what is the education for? We still will have no business at all.

Another thing that they told me is the import. Like this garment here, let's say it is $2. In Taiwan, Korea, Hong Kong, the labor maybe only is 70 cents. In May Co., the stores, all get from outside the country, the garments. That means the people just care to control the business.

Is the Government thinking to help us, the businessmen, to solve some kind of problem?

Another problem is labor. I have put an ad in the Chinese newspaper, Spanish newspaper, to look for the workers. No one shows up. The one who shows up is unskilled. We get the low price. How can we afford to pay the minimum wage to unskilled workers?

I think the Government should have some kind of program to help us, like a training program, OK, in a factory for a certain time, 3 months, something like that. We pay half the wage, the Government pay half the wage, until the operator have a skill to work. When the operator comes in, the person says, I am a operator, not even can go straight.

But we got to pay.

We in the bottom line are the businessmen. We get the pressure from the worker. We get the pressure from the Government. We get the pressure from the manufacturer.

We get a call from a manufacturer, tomorrow the deadline, you have to deliver. They never pay overtime for us to deliver, to make this garment. How can we do what they want?

But Senate bill 545 passed in California; I think the whole bill is against the contractor because we are so small, no power. Whatever they want to do they do it. I don't know much about, I am not a lawyer. That is what I feel, what I said.

Thank you very much.

Mr. MILLER. Let me ask you if you think your position would be strengthened by competition from additional contractors who could farm out additional homework without concern of paying the minimum wage compensation.

I am trying to determine what your answer here is. If your answer is just to open it up, I am at somewhat of a loss on how that would strengthen the hand of the contractor.

It seems to me you would strengthen the hand of the manufacturer because you either take it or leave it. If a contractor is able to engage workers, as pointed out here, where he can save money by exploitation, he will take it and you will have it. I just wonder how you would be strengthened.

Mr. JUNG. Like I tell you before, I agree with what they say, I don't want to go over that again.

Mr. MILLER. I understand that. My concern is that your remarks might be interpreted to say that the ban is in fact an impediment to your making a living, that you cannot make a living because you have this ban and you have to comply with the law.

I am just trying to determine if you go from there to saying you ought to lift the ban. You are not saying that.

Mr. ARCINIEGA. Congressman Miller, the law, the Federal law as it stands in banning homework, this conjunction with the State law, is a great aid to us. It would detract from our profitability if it would be lifted.

Now, to say that it would make us greater profit if we would go on and to work at home, whereas Mr. Kim mentioned we wouldn't have to pay workmen's compensation, all the other necessary overtime, or whatever, keep records of any sort. But we are qualified, competent contractors in an industry that needs a certain amount of regulation, and by lifting this ban, it would just detract from that regulation.

Mr. MILLER. Well, that is my concern. I am sure there are individuals who support the lifting of the ban on the theory that then the marketplace could work perfectly if you didn't want the job, somebody would come in and work for 35 cents an hour—

Mr. ARCINIEGA. But is that minimum?

Mr. MILLER. That has to go hand in glove with this. You cannot have half of the industry that obeys the law and half that violates the law.

I just wondered what in fact would happen to the industry, your portion of that industry, if you just had a dramatic proliferation of homework. Some of the manufacturers suggest that the industry cannot operate that way, it is too big, you need organization where you can maintain quality and certain working conditions. In fact, you need that for the industry to be competitive.

Mr. **Arciniega**. That is absolutely true. You need a great deal of regulation in many areas to make the process work. If you were to open it up completely, as you have mentioned, it would just create complete chaos.

But just to make a point of how this hearing has taken place, we started out with the legislature, Senator Montoya, making his comments. The press, which in many cases created a catalyst for all our member associations here in the local area to get together, organized labor in the form of Mr. Wall, enforcement, Mr. Razo.

And, finally, the contractors. We acknowledge the fact that we have a particular part in the rung of the ladder of profitmaking. If we are to make this complete circle of working together as entrepreneurs, we must maintain a certain amount of cohesiveness.

Lifting this ban will just blow the nucleus completely out of context. It would be unspeakable.

Mr. **Miller**. The Labor Department obviously, if they are going to lift the ban, will have to struggle with how do you then enforce whether or not somebody is making the minimum wage while home working in the garment industry?

I suspect that your expertise can tell you pretty well whether a price is going to return the minimum wage or it is not, knowing generally the skills. They have suggested that they would do time and motion studies, to make a determination of how long it takes to sew this shirt, and then there would be a set price.

Don't let me speak for you, but it would be my impression as contractors who are in competition with one another, that would not be your ideal situation.

Mr. **Arciniega**. No; it would create a price fixing situation. Then you would have to be either awfully large or awfully small to make the dollars.

Mr. **Miller**. And you figure, I would assume you are suggesting——

Mr. **Arciniega**. There is no middle ground for——

Mr. **Miller** [continuing]. As a contractor under the current system you make your best effort to assemble your most reliable skilled individuals. You put together a group, that is the competitive nature of it. If you put together several individuals, that cannot sew straight, you lose something, I would assume, in the competition.

Mr. **Arciniega**. That is true.

Mr. **Miller**. Do you have a lot of shifting of people that you engage to do the work that you contract for? Are you talking about a fairly transient group?

Mr. **Arciniega**. No; in my particular business, I am a cutting contractor, I cut clothes only. My nucleus of people has been pretty static. They have not changed dramatically over a period of time. I do know of what you would call transient labor, whereby when you are involved in a peak season, where there is a lot of work available, you will need additional help to augment what you have inhouse.

But you go on the premise when you hire that particular type of labor you make it well aware the particular type of work involved. It is not necessarily a longevity type situation. But you keep your people that are able to give you the production throughout the year. But then again, you do not want to enforce upon them a hardship whereby even though they are efficient, to provide additional work that they really cannot provide for you in a comfortable manner.

That is why you augment it with additional labor.

Mr. **Egas**. I would like to make a comment regarding this situation. We are sewing contractors. We are involved specifically with putting the garment together. We do have a tremendous turnover rate in our section of the industry. And this is due to the fact that the pricing structure is outdated.

We have made a number of attempts to set some prices for certain garments. In some cases we have priced some garments, we have written down on a piece of paper the number of dollars that a garment can be made for and, by and large, we can say that we have all come to the same conclusion, being pretty close to a reasonable price for that garment.

And yet when it comes down to contract for that garment, the price is completely out of range. In other words, for many contractors, to make a garment for that price would mean a violation of the law.

Now, this is in part due to the fact that there are too many contractors, No. 1. No. 2, that the industry sets a price for the manufacture of that particular garment, not because of the number of operations involved in that particular garment, but because of the price they sold that garment to the retailer.

We have seen cases, for instance, where they have a number of styles for the season, where every style was sold for the same price to the retailer, and yet every one of them was different and every one involved a different number of operations, one costlier than the other. Yet, the contractor was not forced but was faced with the alternative of taking the work and laying off—I mean get his people work or lay off his working force, and that has caused the instability of our industry.

This is one of the few industries where there is no stability whatever. Very few cases you see people year after year in the shop. Mostly it is people jumping from shop to shop, because the prices do not reflect the cost of living.

There are no provisions for inflation. There is no provision for increase of minimum wage year after year. And this is something we have been trying to live with at our level as contractors, and that is why we are trying to get together as contractors.

Mr. **Miller**. I would assume that as you attempt to get together within your segment of the industry, that that effort, then, would probably be helped by this most recent law, 545?

Mr. **Egas**. Yes, sir.

Mr. **Miller**. In a sense, if a manufacturer is going to do business, he is going to do business with a registered contractor who in theory has certain standards and conditions.

Mr. **Arciniega**. He has met certain qualifications in registering in California.

Mr. **Miller**. Yes. So I assume that would help you against a person who comes in and sets up business and undercuts you, but really is not sufficient to help you stay in business over a long period of time.

Mr. **Egas**. The success of the law will rest upon the ability of the labor people to check up with manufacturers and see they are dealing only with legitimate contractors.

Mr. **Miller**. I assume you think that would help you also in negotiating prices with manufacturers.

Mr. **Egas**. Yes, sir.

Mr. **Kim**. Since registration started June 1, since I am the president of the association, I am receiving all kinds of telephone calls. In the past months I have been receiving calls from the contractors that they were looking for work, they were asking me if any manufacturer would like to give them work.

But these days I have never received any call from the contractor but from the manufacturers. They are looking for the contractors. So this means that registration according to the law really is helping both contractors and the manufacturers, because illegal, both manufacturers and contractors, are not registering. And the law said if you are taking any work from the nonregistered manufacturer, that goods can be confiscated 100 percent.

So the legitimate manufacturers are asking contractors to send a copy of the registration license to the manufacturer. Otherwise they cannot give out the work. I think this is the reason they are looking for good, stable, legitimate contractors now.

Really S.B. 545 is helping legal operators.

Mr. **Miller**. I would assume from that, then, you would tend to agree that strengthening the enforcement and the penalties for violations of minimum wage, Fair Labor Standards Act, would also help you in terms of keeping a skilled and trained pool of people to draw on.

Mr. **Arciniega**. Absolutely.

Mr. **Kim**. That is not the only one. Some manufacturers increase even the prices by a penny or a quarter these days because the demand is great and nobody wants to take over this work, so they say, "Here, I give you more, 25 cents more." So there is good news coming to us.

Mr. **Miller**. It is good news for a lot of people.

Mr. **Arciniega**. Yes, it is.

Mr. **Miller**. Thank you very much for giving us the benefit of your expertise on this.

Thank you so much for waiting this long to testify.

At this point the field investigation will stand adjourned.

[Whereupon, at 1 p.m., the Subcommittee on Labor Standards of the Committee on Education and Labor adjourned.]

[Material submitted for inclusion in the record follows:]

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Manufacturer's League

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FOR IMMEDIATE RELEASE

TRADE ASSOCIATION DENOUNCES LIFTING OF HOMEWORK REGULATIONS

NEW YORK, October 13, 1981 -- A spokesman for the major trade association of knitted apparel manufacturers in New York today denounced Labor Secretary Raymond Donovan's recent announcement of deregulation in the knitted outerwear industry.

"This action endangers all progress we have made in the past 40 years in upgrading conditions in shops making sweaters, dresses, suits, skirts, pants and other knitted apparel," said Harold Korzenik, counsel to the United Knitwear Manufacturer's League.

"The 1941 ban on industrial homework was a culmination of prolonged investigation and exhaustive hearings by representatives of labor, management and the public sector," he continued. "We have already lost half our market to foreign imports and have been fighting the reemergence of sweatshop conditions with limited success."

"Mr. Donovan's disregard for the ban and its purpose -- to bring order, decency and industrial progress to the apparel trades in America -- seriously threatens our domestic factories, our investment and our workers, and will promote the return of industrial homework to all branches of the apparel industry."

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"Homework calls up a vision of contented little old ladies working with hand needles in a pastoral setting," Mr. Korzenik added. "This is not what will happen. Productive knitting machines and sewing machines will be set up in kitchens, basements and garages of homes, attended by multiple members of a family, producing substantial quantities of knitted apparel for the competitive market. There will be no actual records of overtime or any work time; no records of minimum wage or required sanitation; no observed ban on child labor or effective control of any kind."

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SHELLEY APPLETON
GENERAL SECRETARY-TREASURER

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FOR IMMEDIATE RELEASE

OCT 16 1981

DONOVAN ACTION THREATENS HUNDREDS OF THOUSANDS OF GARMENT INDUSTRY JOBS

NEW YORK, October 8 , 1981 -- Hundreds of thousands of workers and billions of dollars of production will be jeopardized by a new regulation lifting the 40-year old federal restriction on industrial homework in the knitted outerwear industry. The announcement of the deregulation, made today by Secretary of Labor Raymond Donovan, has been met with dismay and disbelief by both management and labor.

"Mr. Donovan's action turns American industry's calendar back to the darkest days of industrial exploitation," Sol C. Chaikin, President of the International Ladies' Garment Workers' Union (ILGWU), said. "By taking advantage of the most deprived members of our society -- undocumented aliens, the poor and the unprotected -- unscrupulous employers will deprive thousands of American workers, both organized and unorganized, of decent jobs and decent conditions of employment, and they will cheat government out of millions of dollars in revenues."

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AFL-CIO CLC

Mr. Chaikin added that history has proven there is no effective way to police industrial work done in the home and therefore no way of improving these sweatshop conditions.

Noting that efforts to wipe out the practice go back to state legislation enacted one hundred years ago, Mr. Chaikin said these laws were not successful until they were backed by Federal action begun during the New Deal. Passage of the Fair Labor Standards Act in 1938 established the minimum wage with premium pay for overtime, required employers to keep records of wages and hours and regulated child labor.

In 1949, Mr. Chaikin continued, Congress amended the FLSA to incorporate into the law the restrictions on industrial homework in the seven industries in which the practice was most prevalent and most pernicious -- knitted outerwear, women's apparel, embroideries, buttons and buckles, gloves and mittens, handkerchiefs and jewelry.

"Now, with one rash stroke, the Labor Department has removed one of the major areas of protection that took American workers and employers more than one hundred years to build. The spillover into the other six areas is inevitable and unstoppable."

Questioning the legality of the new regulation, Mr. Chaikin said, "The Labor Department simply does not have the right to remove restrictions that were imposed by an act of Congress."

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THE REEMERGENCE OF SWEATSHOPS AND THE ENFORCEMENT OF WAGE AND HOUR STANDARDS

MONDAY, APRIL 26, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR STANDARDS,
COMMITTEE ON EDUCATION AND LABOR,
New York, N.Y.

The subcommittee met, pursuant to call, at 10:07 a.m., at GSA Building, room 305B, 26 Federal Plaza, New York, N.Y. Hon. George Miller (chairman of Subcommittee on Labor Standards) presiding.

Members present: Representatives Miller and Weiss.

Mr. MILLER. Good morning. The Subcommittee on Labor Standards of the U.S. House of Representatives will convene this morning for the purpose of receiving testimony on H.R. 6103, a measure to strengthen the penalties under the Fair Labor Standards Act and to try to deal with the problem of unscrupulous employers who continue to pay their employees the illegal wage.

Our first witness on this legislation will be Mr. Sol Chaikin, who is the president of the International Ladies Garment Workers Union, AFL-CIO.

Without objection, my entire opening statement will be placed in the record, and your prepared statement, Mr. Chaikin, will also be placed in the record in its entirety, so feel free to proceed as you are comfortable.

[Opening statement of Chairman George Miller follows:]

OPENING STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, LABOR STANDARDS SUBCOMMITTEE, APRIL 26, 1982

Good Morning. The Subcommittee on Labor Standards of the U.S. House of Representatives is convened to consider H.R. 6103, amendments to the Fair Labor Standards Act.

We are in New York today to build upon the foundation established by this Subcommittee last year in its series of hearings on the enforcement problems associated with the proposal to lift the ban on industrial homework. We learned that the severe problems with the enforcement of the wage and hour laws will continue until enforcement sanctions in the law were dramatically strengthened. Representatives of workers and industry and state law enforcement officials agreed that we need a strengthened law and more aggressive enforcement. Secretary of Labor Raymond Donovan shares this conclusion, and he promised, early last year, to propose legislation to toughen the penalties under this important labor law. He has not yet submitted such legislation.

That failure, has left the underpaid and easily exploited workers in a very unfortunate position. They can wait no longer, and a decent society can wait no longer for the law of the land to be enforced. This view should be shared by a law and order Administration. Yet, since Mr. Donovan took over the Labor Department, the number of wage and hour investigators has been reduced by 15 percent, and next year, the Department plans to conduct 13,000 fewer wage and hour investigations than it conducted last year. With fewer investigators and fewer inspections, we have to make every investigation count, and that means, we need a tough law—one with teeth.

And H.R. 6103 puts teeth in the law. Currently, an employer who gets caught violating the law by underpaying workers has the lightest of sentences. The lawbreaker is either forced to repay the worker the amount of the underpayment, or if the underpaid worker cannot be found, the wage underpayment is simply returned to the offending employer. The worst thing that could happen to a lawbreaker is that he or she has to pay what should have been paid all along. The best thing that could happen is that the lawbreaker gets to keep the profits of the crime.

H.R. 6103 removes this incentive to break the law. The bill requires that the offending employer pay the cheated worker three times the amount of the underpayment. And, if the employee cannot be found, the funds will be deposited in the Treasury of the United States—not into the bank account of the lawbreaking employer. H.R. 6103 simply means that this kind of crime, will no longer pay.

This bill makes enforcement of the Fair Labor Standards Act meaningful. It provides true protection for workers, and as important, provides meaningful protection for thousands upon thousands of law-abiding employers in this city and the nation—good citizens and good business people who must do battle daily with unscrupulous, wage gauging competitors. We have too often lost sight of the fact that aggressive enforcement of labor standards laws protects not only the victimized workers, but legitimate businesses as well.

I am pleased that representatives of both labor and industry, joined by state law enforcement officials, are here to assist the Subcommittee in its consideration of this bill. But, we shouldn't be misled into believing that this problem is limited to either New York or the garment industry. It is an epidemic, throughout the United States, and in industries as diverse as agriculture and manufacturing. Wherever there are low-skilled, low-paying jobs, the possibility of exploitation exists. We must stem that tide, and make the criminal, not the victim, pay.

This hearing is a continuation of the Subcommittee's work which was begun less than a year ago. Our hearings last year laid out the problem, and pointed us toward the solution. These hearings start us down the road toward making that solution a reality, and insuring that our most defenseless workers are protected.

[Text of H.R. 6103 follows:]

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97TH CONGRESS
2D SESSION

H. R. 6103

To amend the Fair Labor Standards Act of 1938 to provide that an employer who violates section 6 or 7 of that Act shall be liable to the employee involved for three times the amount of wages involved in the violation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1982

Mr. MILLER of California introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To amend the Fair Labor Standards Act of 1938 to provide that an employer who violates section 6 or 7 of that Act shall be liable to the employee involved for three times the amount of wages involved in the violation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(1) by inserting "(1)" after "(b)";

(2) by amending the first sentence to read as follows: "Any employer who violates section 6 or 7 of

this Act shall be liable to each employee affected in the amount of three times the unpaid minimum wages or unpaid overtime compensation, as the case may be.";

(3) in the third sentence by striking out "An action to recover the liability prescribed in either of the preceding sentences" and inserting in lieu thereof the following:

"(2) An action to recover the liability prescribed in paragraph (1)"; and

(4) in the sixth sentence (A) by striking out "this subsection" and inserting in lieu thereof "this paragraph", and (B) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively.

(b) Section 16(c) of the Fair Labor Standards Act of 1938 is amended—

(1) in the first sentence by striking out "under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages" and inserting in lieu thereof "to bring an action under subsection (b)(2) for such wages or compensation";

(2) by amending the second sentence to read as follows: "The Secretary may bring an action in any court of competent jurisdiction to recover three times

the unpaid minimum wages or unpaid overtime compensation, as the case may be."; and

(3) in the third sentence (A) by striking out "the first sentence of such subsection" and inserting in lieu thereof "the first sentence of paragraph (1) of such subsection", and (B) by striking out "unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection" and inserting in lieu thereof "the amounts".

(c) Section 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 217) is amended by adding at the end the following: "Any sums recovered by the Secretary on behalf of an employee in an action under this section shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.".

○

STATEMENT BY SOL C. CHAIKIN, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

Mr. CHAIKIN. Thank you very much, Congressman Miller. May I at the outset offer to you the commendation of hundreds of thousands of members of the ILGWU across the country and, indeed, if I may be permitted just for this moment, although others will represent themselves, say that you are doing a service not only to the workers in the legitimate part of this industry, but union and nonunion workers alike and union and nonunion manufacturers and employers alike.

This is an issue that transcends the question of unionism, it transcends the question of competition between one and another.

The subject which you are attempting to address, and to which I will give some attention in the next moment or two, is the existence within the U.S. economy of what is really part of the underground economy.

You are trying to shore up the average, ordinary, minimal protections that were enacted by the Congress of the United States and, indeed, many States prior to the enactment of the Fair Labor Standards Act; protections which the community believed were reasonable and yet essential to the well-being of the working people of this country.

Through the Fair Labor Standards Act you enacted a code of conduct which would guarantee the very minimum kind of accommodations for workers, particularly those engaged in highly competitive, labor intensive industries. It spelled out the minimum wages they were to receive, the maximum hours they were to work before overtime would be credited to them, a system of recordkeeping which would be essential in order that evidence would be available to show whether or not an employer adhered to the requirements of law.

Over the years the bill has served us well. Improvements have been made in many areas in the minimum wage law, as it has come to be known. Generally speaking, those improvements have come after the standards of wages in the United States have been improved immeasurably. There has always been a catch up circumstance. Minimum wages, at their level, have never quite caught up to maintain the reasonable relationship between average wages in the country and minimum wages. But that is not necessarily subject for discussion today.

What has happened is the return of the sweatshops, marking a terrible, terrible renewal of an era which all of us thought was gone from the United States many decades ago.

Particularly in labor intensive industries, whether apparel or others, in the early part of the century, workers were horrendously exploited. Decent citizens, those who were interested in unions, together with those who had a moral outlook, banded together to attempt to eradicate one important evidence of man's inhumanity to man.

By and large we thought we were successful. First, a number of States passed this legislation, and then in the middle 1930's under the New Deal the Fair Labor Standards Act came into effect and we worked together to try to maintain these decent, though low, guarantees for workers.

Over the last decade the United States of America became such an extraordinarily attractive magnet that people from countries outside of our borders came here crawling on their hands and knees, risking their lives, undergoing untold hardships because they thought that life in these United States of America, under whatever conditions, would be far preferable to their lives as they lived them in the countries from which they came.

These people coming here without proper papers, known as undocumented workers, or colloquially as illegal aliens, concentrated in areas where they could become nameless and faceless and merge into the community, and where the fact that they spoke a different language would not necessarily be a handicap, where there might be some people there who could welcome them from the point of view of either being decent to them as a result of their humanity or because they come from the same community, and they flooded into some of our major cities. Here in the greater metropolitan area of New York City it has variously been estimated that there are almost 1 million undocumented workers.

The story of lower California, of course, has been told time and time again. Hundreds of thousands, perhaps even more, congregate around Los Angeles and southern Los Angeles.

The great city of Chicago is now the host to a large group of undocumented workers.

These people have got to stay alive and they cannot expose themselves. So they are ready, willing and able to work as long as they have an opportunity to work.

Unfortunately, there is always a sufficient number of unscrupulous businessmen who set up manufacturing and/or other concerns to take advantage of the desperate need of these people to find some work, and so we find it in abandoned garages and basements of apartment buildings in the barrios and the ghettos of our major cities across the country. We find it in fields and also in farms, as well. We find it in all different types of labor intensive industries particularly. Little shops are set up by people who have little or no concern for the human personality, so people are hired to work without regard to minimum wages, without regard to overtime provisions of the law, without regard to record keeping under the law.

There has been almost a wholesale attack on these standards, low as they may be, minimal as they may be, standards to which union and legitimate nonunion companies adhere. The net effect of these sweatshop operations is to provde unconscionably burdensome competition for the products that are made under the requirements of law.

Now, we have had a very serious problem over the last number of years; the rewards of breaking the law have been a lot greater than any of the penalties which might accrue to one of these malfactors if they were to be discovered. It was almost an additional attraction where the fines that you pay are minimal compared to the rewards which would accrue.

And so it is, Congressman Miller, that our union welcomes your efforts to make a little more realistic the kind of penalties which should be paid for these violations. In our view, perhaps, they may not be of a sufficiently deterring character. But it is essential that an important start be made and there is no question in my mind that you are responsible for making that important beginning.

Beyond that, though we welcome your efforts, we know that yours has been a very strong voice for putting an additional element together with the proposals that you have made. That additional and essential element is enforcement.

All of us in government and out, those of us who are interested in the welfare of the communities in which we live, realize that putting laws on the books is just not sufficient. You have got to have people who are ready, willing and able to enforce these laws, to bring the violators to heel, to give them their day in court and proceed beyond that.

Your voice has been raised, together with the voices of the AFL-CIO and of legitimate businessmen, to urge upon the Secretary of Labor of past administrations and particularly of this administration that the number of investigators attached to the U.S. Department of Labor, rather than to be decreased, should have been increased in a meaningful amount.

What we have found, Congressman Miller, in the past 15 months that this administration has been in power, aside from high-sounding commitment to enforcement of law, aside from promises made publicly to seek to eradicate this disease, which we thought we had been fortunate enough to cope with in the past, we have fewer investigators on the payroll of the Department of Labor around the country today than in recent history. The first budget cuts have resulted in decreases of 15 to 20 percent in the personnel of the Department available to make investigations and to put the facts and figures together which would make a case.

We are told, we hear from the grapevine (our relations with the Department of Labor is such that occasionally we speak to each other) the expectation is that there are going to be 15,000 to 20,000 fewer investigations during 1982 than during 1981. Therein lies a good part of the difficulty. I know when I speak with you, Congressman Miller, I am speaking to one who has the faith, you are one of the saved and you are doing all you can as a Member of the Congress to bring some intelligence to bear, some equity to bear, a sense of fairness. You have exhibited, together with a number of others, a deep understanding of the infrastructure of a decent society. A decent society is concerned more with those who have the least, and more with those who cannot help themselves than with those of us who may have more than we need or who have the equipment, the knowledge and access to power in order to help ourselves if we get into difficulty.

This group of workers whom you seek to help are among the most deserving in the country, whether they are native American citizens who are exploited or whether they are undocumented workers who, because of their status, apparently have few, if any, of the rights of resident aliens or native Americans or American citizens. They deserve your help equally. They cry out for it as human beings on the basis of their humanity and we urge you to help them on that basis as well.

Workers in the United States otherwise well protected ask that you help them and applaud your efforts because they understand the difficult competition which they face when the product which they make are sold in the national market side by side with the products that come out of the sweatshops in these areas.

And last, employers, some of whom will speak for themselves, urge you to help and applaud your efforts and support this amendment to the Fair Labor Standards Act because they know what competition is like. They risk their time, their effort, their money, their intelligence and their sweat, too, because not all of them just sit up in an ivory tower and clip coupons. Many of them are working employers because they come from labor intensive, highly competitive small business, and their's is a hands on or working kind of supervision. They must surely applaud your efforts because legitimate businessmen who pay the Federal national minimum wage as nonunion employers and adhere to the other strictures of law, cannot compete against sweatshop wages of $1 a hour or $1.25 an hour. They cannot compete with employers who do not even pay Federal law wage benefit taxes, FICA taxes. They cannot compete against employers who do not cover their workers with workmens' compensation. They cannot compete against employers who do not adhere to minimal standards of occupational safety and health.

Beyond that, it is apparent that employers who are organized, where workers have an opportunity to speak for themselves, to negotiate what the value of their time and effort, their work and experience and skill are worth, those employers, who are average employers, certainly will be driven to distraction and out of business if the sweatshops continue to grow, if they continue to be such a competitive menace.

So on behalf of the workers who I have the privilege to represent, let me indicate that we are four square behind your efforts and those of the other Congressman to move these amendments along, to strengthen the Fair Labor Standards Act, to give it more meaning and to bring to the attention of the Labor Department and, indeed, to the American community, that while millions of American workers may not now be threatened by the existence of these sweatshops, a good part of our economy and a good part of our labor force will within the very near future find themselves in grave difficulty.

Thank you very much.

Mr. MILLER. Thank you very much for your testimony.

I would like to introduce and recognize my colleague from New York, Congressman Ted Weiss.

Thank you very much for joining us this morning.

Mr. WEISS. Thank you, Mr. Chairman. I want to welcome you to New York and want to underscore also my appreciation to Mr. Chaikin for so eloquently reminding us that this fight for fair treatment of workers never ends and that your leadership has been really very, very necessary in this effort.

Mr. MILLER. Thank you, Congressman.

Just two points on your statement, Mr. Chaikin. I think you are obviously very correct that currently we are sending a dual signal to the unscrupulous employer, first, that your chances of getting caught are minimal as we continue to see these cutbacks in both enforcement officers and the intentions to conduct compliance actions and enforcement actions; and second, if you do get caught currently under the law, there is nothing to lose. You simply don't have to do anything more than the law would have required had you gone ahead and complied. Even in some instances, obviously, we are finding that the workers disappeared, so the employer is, in fact, better off by violating the law.

I think this effort in terms of increasing the penalty will be helpful, but I have to underscore what you said. If the Department is not interested in enforcing it, there is little we can do and I am very disturbed by the continued cutback in compliance actions.

As you point out, we estimate that there may be 10,000 to 15,000 fewer compliance actions around the country. The cutback is not only in positions but the Department is also taking the existing positions and detailing them out to other actions for which, in fact, they were not really hired.

Now we see something in California that has us all a little bit at a loss here. Apparently, there is going to be a whole series of raids throughout California in those industries or in those jobs that they think may—that the Department of Labor thinks may be attractive to American citizens. Well, nobody knows quite what that means, but again, we find a situation where if individuals are caught, the penalty is nil.

Finally, let me just say that I think it is very important for people to understand that compliance, enforcement, and penalty is a protection for a legitimate industry and I think that has got to be a fundamental point. It is not just the worker who would benefit, but as you point out, the people who comply with the law and every day are trying to compete with people who are simply gouging the unprotected workers.

Thank you very much.

Ted, do you have anything.

Mr. **Weiss**. No, I don't, thank you.

Mr. **Miller**. Thank you very much for your support and help in the past with this.

Our next witness will be Mr. John J. Sweeney, who is the international president of the Service Employees International Union.

Mr. Sweeney, welcome to the committee. Your prepared statement will be placed in the record in it's entirety and please feel free to proceed as you are most comfortable.

STATEMENT OF JOHN J. SWEENEY, INTERNATIONAL PRESIDENT OF SERVICE EMPLOYEES INTERNATIONAL UNION

Thank you very much Congressman Miller and Congressman Weiss.

I am John Sweeney, president of Services Employees International Union. I am happy to have the opportunity to testify here today in support of H.R. 6103.

This is a matter of great concern to all American workers. The Fair Labor Standards Act is a rather modest guarantee of minimal wage and hour standards, as you know. It is deserving of the strictest enforcement policies and severest penalties for violators, yet we see the protections afforded by the Fair Labor Standards Act deteriorating in the absence of a disincentive to violate this law.

As it now stands, there is no penalty for breaking the law. The requirement that back wages found due be restored to affected workers is hardly a fine or payment for damages. This basic requirement is hampered by extensive recordkeeping violations and the inability to located affected workers.

The fact that many employers continue to violate the FLSA even after they have been investigated is proof that not only are there no disincentives but the rewards of noncompliance are great. Of the sample of offenders recently studied by the GAO, 37 percent had at least one prior violation of the act.

Minimum wage and overtime violations are not an isolated problem. The exploitation of American workers is a common occurrence, not only in the sweatshops of the garment industries. The abuses can be found in nearly every industry, but particularly in those characterized by high employment of low-skilled workers and minority groups.

Nor are the violations confined to small businesses. The thread of exploitation runs through operations of all sizes, from small retailers to large hotels and motels, from individual service stations to major construction sites, and in the notoriously offensive restaurant business, from small operators to large national chains.

Underpayments of the Federal minimum wage and overtime provisions are exceptionally common in the industries represented by service employees.

In the contract cleaning industry, for example, thousands of small, fly-by-night contractors circumvent the minimum wage every day by employing janitors off the books, or sometimes more creatively by forcing them into artificial partnership or subcontractor relationships.

The industry has a high turnover rate so that few of these workers ever receive the back wages when violations are found.

Some of the worst offenders, we have found, are the contract security guard agencies. Because security guards are not afforded the protections of the NLRA, wages in the industry have always hovered at the federal minimum wage level. Many security guards are earning less than the minimum wage and are working double shifts without overtime pay. Even worse, illegal deductions are consistently made from their paychecks for such items as uniforms, gun permits, even repairs of the company cars.

Abuses of the FLSA, particularly the overtime provisions, have historically been high in the health care industries. Nurses and nurses' aides in the short-staffed health care institutions are traditionally expected to "volunteer" extra hours with no extra pay.

Public attention in recent years may have abated the problem in both hospitals, but it persists in nursing homes and runs rampant in the growing industry of home health care.

We have also found large-scale exploitation of workers in the jewelry industry. Not unlike the garment industry, small shops and jobbers prevail in this low-wage industry, exploiting large numbers of minority and undocumented workers at piecework rates that sometimes amount to as low as $1 an hour.

If we allow the exploitation of workers to continue and the widespread abuse of fair labor standards to go unchecked, the consequences will be paid by all, not just by those who are forced into underpaying jobs, but by every American worker whose wages decline and whose jobs are displaced as a result, and by every legitimate business person who must face the unfair competition from noncomplying employers.

Our own members who have struggled for years to obtain a decent living for themselves and their families must ultimately suffer a lowering of standards in the industries in which they work.

Last year, Secretary of Labor Donovan promised to promote legislation to toughen penalties for violations of the Fair Labor Standards Act. Yet, no such legislation has been proposed by the present administration.

Fortunately, Congressman Miller has introduced—and Congressman Miller and Congressman Weiss, we are very proud of the introduction of this legislation because American workers can not afford to wait much longer. At the same time the recession is encouraging desperate businesses into illegal activities, and high unemployment rates are forcing more workers into off-the-book jobs, Federal budget cuts are translating into a slackening in the enforcement of the law.

Complaints registered with the Department of Labor are on the rise, but with the current backlog of 19,000 complaints, the reduction of 136 enforcement officers and a more than 20 percent decline in anticipated investigations, the Department of Labor is currently investigating a 4-year-old complaint in a Rhode Island nursing home where only 1 of the original 90 workers are still employed.

We wholeheartedly support the legislation that you have proposed, which would require the payment of three times the amount of back wages due to affected workers, and payment to the U.S. Treasury when these workers cannot be located.

The legislation carries with it the promise of a brighter future for all workers not now earning the wages guaranteed by the FLSA.

Thank you very much.

Mr. **Miller**. Thank you.

[Prepared statement of John Sweeney follows:]

Prepared Statement of John J. Sweeney, International President, Service Employees International Union, AFL-CIO

I am John Sweeney, International President of the Service Employees International Union, and I thank you for the opportunity to testify here today.

We are here today because of a matter of grave concern to all American workers. The Fair Labor Standards Act is a rather modest guarantee of minimal wage and hour standards, deserving of the strictest enforcement policies and severest penalties for violators. Yet, we see the protections afforded by the Fair Labor Standards Act deteriorating in the absence of a disincentive to violate this law.

As it now stands, there is no penalty for breaking the law. The requirement that back wages found due be restored to affected workers is hardly a fine or payment for damages. And even this basic requirement is hampered by extensive recordkeeping violations and the inability to locate affected workers.

The fact that many employers continue to violate the FLSA even after they have been investigated is proof that not only are there no disincentives, but the rewards of noncompliance are great. Of the sample of offenders recently studied by the GAO, 37 percent had at least one prior violation of the act.

Minimum wage and overtime violations are not an isolated problem. The exploitation of American workers is a common occurrence—and not only in the sweatshops of the garment industries. The abuses can be found in nearly every industry, but particularly in those characterized by high employment of low-skilled workers and minority groups.

Nor are the violations confined to small businesses. The thread of exploitation runs through operations of all sizes—from small retailers to large hotels and motels; from individual service stations to major construction sites; and in the notoriously offensive restaurant business, from small operators to large national chains.

Underpayments of the federal minimum wage and overtime provisions are exceptionally common in the industries represented by SEIU.

In the contract cleaning industry, for example, thousands of small, fly-by-night contractors circumvent the minimum wage every day, by employing janitors off-the-books or sometimes more creatively by forcing them into artificial partnership or subcontractor relationships. The industry has a high turnover rate, so that few of these workers ever receive the back wages when violations are found.

Some of the worst offenders, we have found, are the contract security guard agencies. Because security guards are not afforded the protections of the NLRA, wages in the industry have always hovered at the federal minimum wage level. Many security guards are earning less than the minimum wage, and are working double shifts without overtime pay. Even worse, illegal deductions are consistently made from their paychecks for such items as uniforms, gun permits, and even repairs of the company cars.

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We have also found large scale exploitation of workers in the jewelry industry. Not unlike the garment industry, small shops and jobbers prevail in this low-wage industry, exploiting large numbers of minorities and undocumented workers at piecework rates that sometimes amount to as low as one dollar an hour.I11If we allow the exploitation of workers to continue, and the widespread abuse of fair labor standards to go unchecked, the consequences will be paid by all—not just by those who are forced into under-paying jobs, but by every American worker whose wages decline and whose jobs are displaced as a result, and by every legitimate business person who must face the unfair competition from non-complying employers. Our own members, who have struggled for years to obtain a decent living for themselves and their families, must ultimately suffer a lowering of standards in the industries in which they work.

Last year, Secretary of Labor Donovan promised to promote legislation to toughen penalties for violations of the Fair Labor Standards Act. Yet no such legislation has been proposed by the present administration.

Fortunately, Congressman Miller has introduced this legislation, because American workers can't afford to wait much longer. At the same time the recession is encouraging desperate businesses into illegal activities, and high unemployment rates are forcing more workers into off-the-book jobs, federal budget cuts are translating into a slackening in the enforcement of the law.

Complaints registered with the Department of Labor are on the rise, but with the current backlog of 19,000 complaints, the reduction of 136 enforcement officers, and a more than 20 percent decline in anticipated investigations, few workers can ever expect to recover the wages they are owed. The Department of Labor is currently investigating a 4-year-old complaint in a Rhode Island nursing home, where only 1 of the original 90 workers are still employed.

We wholeheartedly support the legislation you have proposed, Mr. Chairman, which would require the payment of three times the amount of back wages due to affected workers, and payment to the U.S. Treasury when these workers cannot be located. The legislation carries with it the promise of a brighter future for all workers not now earning the wages guaranteed by the FLSA.

Thank you.

Mr. MILLER. I am sure that Congressman Weiss listened with the same interest as I did to the President as he discussed the problem of noncompliance with the provisions of the IRS Code, and I would hope that we would get some enthusiastic support for this legislation that we think, in fact, will help bring about that compliance. It is difficult to talk about taxing people's wages who are so underpaid, but nevertheless, it is pretty clear that we are also losing the revenues of the employers who choose to engage in the activity in this manner.

Congressman Weiss?

Mr. **Weiss**. Thank you very much for your testimony, Mr. Sweeney. Again, it highlights the fact that instead of moving forward, we are rapidly moving backward.

Mr. **Miller**. Thank you.

In the instance that this testimony speaks to, currently under the law as I understand it, if the Department of Labor concludes an investigation in Rhode Island, and according to what you say here, 89 of the employees are gone, they, in fact, resolve it against the employer. If the funds were withheld, they go back, right, under the law?

Mr. **Sweeney**. Yes, that's right.

Mr. **Miller**. So the employer, after 4 years of investigation, after rolling over his staff, is, in fact, benefited by his illegal action?

Mr. **Sweeney**. He has a substantial net gain by the delay in the investigation and by the high turnover rates of the industry.

Mr. **Miller**. So it is to the employer's interest if it wants to just drag it out until you lose the whereabouts, or the Department of Labor loses the whereabouts of your employees?

Mr. **Sweeney**. That is correct.

Mr. **Miller**. And obviously in the industries that you represent you are talking about a pretty transient population with respect to job movement and employers?

Mr. **Sweeney**. That is correct.

Mr. **Miller**. Thank you very much.

Mr. **Sweeney**. Thank you.

Mr. **Miller**. Next we will hear from Mr. Joseph Armer, who is the director of labor standards, New York State Department of Labor.

I think it may also be helpful if Mr. Dowling would also join Mr. Armer.

Why don't you come up here since you are both involved in enforcement? I think that may be helpful.

Mr. **Armer**. We often work together, Congressman.

Mr. **Miller**. Well, that is what I was hoping.

STATEMENT OF JOSEPH ARMER, DIRECTOR OF LABOR STANDARDS, NEW YORK STATE DEPARTMENT OF LABOR

Mr. Chairman, on behalf of the New York State Department of Labor and Industrial Commissioner Lillian Roberts, I appreciate the opportunity to express our agreement with the conclusions that led you to introduce a bill establishing reasonable penalties for violation of the Federal minimum wage law and our support of measures to deprive noncomplying employers of the profits that come from deliberately violating the law.

In New York State we have reached the same conclusions and are headed in the same direction.

We have a minimum wage law in New York State, $3.35 an hour. It is augmented by minimum wage orders. It does not have the time and a half of the regular rate of pay that the Federal minimum wage has, otherwise it is fairly similar.

Two years ago a law was enacted allowing the industrial commissioner to assess interest on unpaid minimum wage underpayments. The interest as it stands at current rates is calculated right from the date the payment should have been made to the employee and is transmitted to the employee in addition to the original amount as computed.

The law went into effect on August 29, 1980, and since then interest has been assessed on 334 cases.

This system at least compensates the aggrieved employee for the loss of the use of his money and it also partially removes the advantage from the employer who engages in delaying tactics rather than making timely restitution.

It does not, however, deal with the issue of inadequate payroll records. Those who enforce the New York State minimum wage law, like their counterparts in the Wage and Hour Division, and incidentally, in New York State we have a splendid working relationship with the regional office of the Wage and Hour Division. We often work independently or together.

We frequently find ourselves in a situation where we have to compute minimum wages for workers whose employer has failed to keep or produce records of hours worked and wages paid. It is good business not to keep records.

The compliance officers reconstruct a record through interviewes with affected employees, if they are, indeed, available to interview. In order to sustain an underpayment that will hold up under review by quasi-judicial bodies in the courts, enforcement officials tend to underestimate the hours worked. In such cases, the employer who fails to comply with the recordkeeping requirements of the labor law is again rewarded by having to make restitution of a lesser amount.

When New York State enacted the labor law amendment permitting interest assessment, it also provided for the assessment by the industrial commissioner of a civil penalty in an amount not exceeding 25 percent of the total amount found to be due. The size of the penalty is based on the cooperativeness of and compliance record of the employer, particularly as it relates to the adequacy of recordkeeping.

Since August 29, 1980, we have assessed 71 civil penalties under this provision. The moneys are deposited in the State treasury. If the employer fails to remit the underpayment with interest and penalty, if imposed, a judgment is filed locally by the State attorney general, to facilitate collection.

We have not had enough experience with the interest and civil penalty provisions to definitely assess their impact on our program, however, a recently completed study of employment practices in the garment industry in New York State led us to the conclusion that failure to comply with the recordkeeping requirement is giving unscrupulous employers an economic advantage which must be removed.

It is so that in case after case we would walk into an establishment and find that the records were just not sufficient to either prove or disprove that minimum wage was or was not being paid.

In our judgment the situation in the garment manufacturing industry is critical. Apparel workers are particularly susceptible to exploitation. To do nothing in the face of widespread violations of labor standards is to lock in the present conditions, which also include illegal industrial homework in addition to the usual possibility of minimum wage violations.

If it is good business not to keep payroll records, minimum wage enforcement becomes a farce.

When Commissioner Roberts presented the results of a recent study, she asked the legislature to enact for the garment industry a civil penalty of $50 per employee for failure to keep records of hours worked and failure to furnish wage statements. She also requested the establishment of criminal penalties of not less than $2,500 or 6 months imprisonment, or both, with failure to keep records or furnish wage statements constituting a separate offense for each employee involved. This report has been sent to the Governor, into the Legislature of the State of New York, and copies of the report are available, Congressman, if you would be interested in having one.

We support the position that labor law violators should not be permitted to benefit from the enforcing agency's inability to locate the former employees for whom an underpayment has been computed. Our procedures allow us to collect from the employer the total amount of the underpayment on behalf of all affected employees past and present.

If we cannot locate the employee via social security number, address or newspaper publication, the money is not returned to the employer but it is deposited in the New York State abandoned property fund and eventually is used for general purposes.

In the past 2 years labor standards has sent $81,000 from its collections to the abandoned property fund. This amount, and the interest earned on it, has, in a small measure, shifted the expense of enforcement onto those who violate the law.

In New York State enforcement of labor standards has been a partnership effort between the division of labor standards and the Federal Wage and Hour Division. Our cooperation has a single beneficiary, the most powerless worker, the one who is employed under the most expoitive conditions and for less than the minimum wage.

I would like to submit our statement for the record and I would be happy to answer any questions, Congressman.

Mr. MILLER. Thank you, Mr. Armer.

[Prepared statement of Joseph Armer follows:]

PREPARED STATEMENT OF JOSEPH C. ARMER, DIRECTOR, DIVISION OF LABOR STANDARDS, NEW YORK STATE DEPARTMENT OF LABOR

Mr. Chairman, on behalf of the New York State Department of Labor and Industrial Commissioner Lillian Roberts, I appreciate the opportunity to express our agreement with the conclusions that led you to introduce a bill establishing reasonable penalties for violations of the federal minimum wage law and our support of measures to deprive non-complying employers of the profits that come from deliberately violating the law.

In New York we have reached the same conclusions and are headed in the same direction. Two years ago a law was enacted allowing for the assessment by the Industrial Commissioner of interest on unpaid wages and minimum wage underpayments. The interest at current rates, is calculated from the date the payment should have been made to the employee and is transmitted to the employee in addition to the original amount computed. The law went into effect on August 29, 1980 and since then interest has been assessed in 334 cases.

This system at least compensates the aggrieved employee for the loss of the use of the money due. It also removes the advantage from the employer who engages in delaying tactics rather than making timely restitution.

It does not, however, deal with the issue of inadequate payroll records. Those who enforce the New York State minimum wage law, like their counterparts in the Wage and Hour Division, frequently find themselves in a situation where they have to compute minimum wage for workers whose employer has failed to keep or produce records of hours worked and wages paid.

The compliance officers construct a record through interviews with affected employees. In order to sustain an underpayment that will hold up under review by quasi-judicial bodies and the courts, enforcement officials tend to underestimate the hours worked. In such cases the employer who fails to comply with the record-keeping requirements of the labor law is rewarded by having to make restitution of a lesser amount.

When New York State enacted the labor law amendment permitting interest assessment, it also provided for the assessment by the Industrial Commissioner of a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. The size of the penalty is based on the cooperativeness and compliance record of the employer, particularly as it relates to adequacy of recordkeeping. Since August 29, 1980, we have assessed 71 civil penalties under this provision. The monies are deposited in the state treasury. If the employer fails to remit the underpayment with interest and penalty, if imposed, a judgment is filed locally to facilitate collection.

We have not had enough experience with the interest and civil penalty provisions to definitively assess their impact on our program. However, a recently completed study of employment practices in the garment industry in New York led us to the conclusion that failure to comply with record-keeping requirements is giving unscrupulous employers an economic advantage which must be removed.

It is our judgment that the situation in the garment manufacturing industry is critical. Apparel workers are particularly susceptible to exploitation. To do nothing in the face of widespread violations of labor standards is to lock in the present conditions. If it's good business not to keep payroll records, minimum wage enforcement becomes a farce. When Commissioner Roberts presented the results of the recent study, she asked the Legislature to enact for the garment industry a civil penalty of $50 per employee for failure to keep records of hours worked and failure to furnish wage statements. She also requested the establishment of criminal penalties of not less than $2,500 or six months imprisonment or both with failure to keep records or furnish wage statements constituting a separate offense for each employee involved.

We support the position that labor law violators should not be permitted to benefit from the enforcing agency's inability to locate the former employees for whom an underpayment has been computed. Our procedures allow us to collect from the employer the total amount of the underpayment in behalf of all affected employees past and present. If we cannot locate the employee via social security number, address or newspaper publication, the money is not returned to the employer. It is deposited in the New York State Abandoned Property Fund and eventually is used for general purposes. In the past 2 years Labor Standards has sent $81,000 from its collections to the Abandoned Property Fund. This amount and interest earned on it has, in a small measure, shifted the expense of enforcement onto those who violate the law.

In New York State, enforcement of labor standards has been a partnership effort between the Division of Labor Standards and the federal Wage and Hour Division. Our cooperation has a single beneficiary, the most powerless worker, the one who is employed under the most exploitive conditions and for less than the minimum wage.

I would like to submit our statement for the record. I will be happy to answer any questions.

Mr. MILLER. Mr. Dowling?

STATEMENT OF WILLIAM DOWLING, ASSISTANT ATTORNEY GENERAL FOR SPECIAL PROSECUTIONS, NEW YORK STATE ATTORNEY GENERAL'S OFFICE

Mr. DOWLING. Thank you very much, Mr. Chairman, Congressman Weiss.

On behalf of the New York State Attorney General Robert Abrams, I am delighted to be here today to share with you some of the Attorney General's observations regarding the exploitation of workers and the proliferating sweatshop industry in New York.

At the outset, let me say that the increase in sweatshops and the worker abuses associated with that term is of significant concern to those of us responsible for enforcing the labor laws here in New York.

Our investigation over the past 18 months has unfortunately confirmed that the worker abuses prevalent in the 1930's and 1940's is with us again today. In spite of all the beneficial social legislation passed by the Federal and State governments some 40 years ago, workers today in 1982 continue to be exploited, abused, and denied fundamental rights and benefits by unscrupulous sweatshop operators.

At the direction of Attorney General Abrams we began a criminal investigation into the sweatshop industry in the garment district of Manhattan approximately 1 year ago.

Working close with the ILGWU, the State Department of Labor and the State Workers Compensation Board, our investigators focused on possible criminal violations of the State labor laws, including a failure to pay minimum wages, failure to provide employees with workers' compensation benefits and disability insurance, and related crimes.

Because of the large number of alleged sweatshops in the garment district, we decided to initially focus on a small number of sweatshops which had previously been in violation of one or more of the labor laws.

Following a 6-month investigation in which the investigators visited approximately 40 sweatshops, the evidence was ready and presented to the New York County Grand Jury, which returned indictments and informations against 12 employers, charging them with 20 crimes, including bribery, criminal contempt of the grand jury, failure to provide employees with worker compensation, and/or disability benefits, and most importantly, for failure to maintain adequate records of employees' wages and hours, thus making it virtually impossible to determine whether or not the employees were being paid the minimum wage.

With respect to these potential minimum wage violations, it was absolutely impossible for us to determine if the employees were, in fact, paid this wage for a variety of reasons.

First of all, our investigation clearly established that the employees, who quite probably were illegal aliens, were in absolute fear of the employer and hence refused for the most part to cooperate with us.

The employers, for obvious reasons, also refused to cooperate and as a result were charged with the misdemeanor of failing to keep adequate books and records.

In two cases employers refused to even respond to a grand jury subpena duces tecum for their books and records, and accordingly, they were charged with contempt of the grand jury.

In cases where the employer did provide books and records, these documents were so incomplete and so most likely false, that given the unwillingness of the employees to assist us, criminal charges were not possible.

Even though they were not charged with crimes, numerous other sweatshops we investigated were in violation of State laws, but either corrected them pursuant to the applicable statute or simply went out of business.

It must also be mentioned that our New York County Grand Jury could only legally consider those violations over which the State had enforcement authority. The Federal Occupational Health and Safety Administration, OSHA, as you all know, has jurisdiction over all abuses relating to working conditions, and based on our investigation we referred to OSHA approximately 20 sweatshops where Federal action may be warranted.

Additionally, significant violations of the New York City Fire Code were uncovered and these were referred to the fire department for appropriate action.

Finally, the investigation also disclosed other criminal activity, including violations of child labor laws for which the evidence was simply insufficient to file criminal charges.

Because of the disturbing results of our initial investigation, the Attorney General directed that a second joint investigation be undertaken in a different section of New York City to find out whether or not the initial findings were an aberration.

Based on this recently concluded second phase, I can tell you that sweatshop abuses are pervasive throughout this city. While I am restricted by legal constraints from divulging today the results of our second phase, I can tell you that we have uncovered other significant labor law violations, as well as penal law crimes related to weapons possession and assaults on workers who demand payment of wages.

What our two investigations have clearly disclosed in fact is a sweatshop underground operating throughout the metropolitan area, which denies their employees critical and fundamental protections and exploits their fear and helplessness as members of this country's forgotten work force.

I can assure you that this Attorney General is committed to continuing our criminal enforcement efforts in this area with the State Department of Labor and the ILGWU in a substantive and positive way to bring these unscrupulous employers to task and to protect the rights of the thousands of exploited workers.

Thank you, Mr. Chairman.

Mr. MILLER. Thank you.

Mr. WEISS. Mr. Dowling, starting off where you left off, do you have the resources to do that?

Mr. DOWLING. Unfortunately, Congressman Weiss, we do not. We have a very close working relationship with the State Department of Labor and they, as I think Mr. Armer will tell you, have had their resources cut back. I have a minimum amount of resources I can devote to this particular problem. There is a crying need for more resources at this level. I think that in this area we could use somewhere in the neighborhood of 75 to 100 investigators just to go out and look at some of these violations.

Mr. WEISS. What do you have?

Mr. DOWLING. Joe, do you want to expound on that, the investigators?

Mr. ARMER. The division of labor standards has effectively 20 people in the street in the city of New York doing—with responsibilities that go well beyond the garment industry. They enforce payment of aggrieved wages, the child labor law enforcement, the whole gamut. We are diverting staff because of what I feel is the crisis in the garment industry, but it is at the expense of the other complaints from other people who are waiting for their wages.

Mr. MILLER. Are they working on a complaint basis?

Mr. ARMER. We work substantially on a complaint basis, yes.

Mr. MILLER. So you are not talking about department initiated compliance reviews or investigations. It is simply based upon complaints from an industry that Mr. Dowling says does not like to make complaints.

Mr. ARMER. Right. It is almost 100 percent complaints.

Mr. WEISS. So that with the best efforts and the absolute commitment, and I know that the attorney general has that, in essence unless you get some tremendous increase in support and resources, he is not going to be able to do the job.

Mr. DOWLING. One of the things we have tried to do in enforcement in New York, and most of these labor law violations are simply misdemeanors, and last year in New York City there were 225,000 arrests, I think, for misdemeanors in New York City alone. What happens is we bring these cases to court and we have no problem getting guilty pleas, and we have tried a couple of these cases and gotten convictions, but no judge is going to send these people to jail because they just do not think this is a serious violation.

So as a result of our two investigations, we decided that—we had filed some legislation that would make a second violation of any of these State labor laws a felony, a class E felony, in which case it would be handled by the supreme court and I think we will have a much better chance of getting some kind of significant jail term or getting some jail term at all, I should say.

But if we are not going to have the investigative resources, then it seems to me what we have to do is to try to establish some kind of deterrent effect out there, and that is not going to happen given the nature of the way judges are dealing with these cases today.

Somehow, if we do not get the investigative resources, if we can get this crime the second time around upgraded to a felony, then I think we might have the possibility of creating that deterrent effect, which I think is very important.

Mr. WEISS. Mr. Armer, you had indicated that you have a good, cooperative working relationship with the wage and hour division?

Mr. ARMER. Yes.

Mr. WEISS. How does that translate into action?

Mr. ARMER. It would translate into action, Congressman, by the State and the Federal person going into the same establishment at the same time and the Federal person would concentrate on the realities of the particular case where the Federal law happened to be stronger, and we would concentrate on the areas where the State law happened to be stronger.

An example would be the absolute time and a half under the Federal Fair Labor Standards Act where that would be something the Federal investigator would go after. The industrial homework violation we would go after because under the State law we are able to assess a penalty of up to $2,500 by the Industrial Commission for homework violations.

So we would split it down the center and cover the whole gamut while we were there.

Incidentally, we also do that from time to time in sensitive migrant labor investigations.

Mr. **Miller**. How large an investigative staff do the Federal people have in New York?

Mr. **Armer**. I'm not sure of their number. I know that it has been reduced dramatically, however.

Mr. **Miller**. And you have been with the Department of Labor for some time, I assume?

Mr. **Armer**. Yes, 28 years.

Mr. **Miller**. Have you noticed over the course of the last 5 years a reduction in staff capacity at the Federal level? Are you aware of the fact that it is more difficult because of reduced resources for them to involve themselves in cases with you?

Mr. **Armer**. I think I can state with authority that the Federal people have been cut back to the point where they cannot do everything that they would like to do and should do. We have an arrangement of almost cross training between the Federal and State in this region. Where the information can be made public we exchange with each other. So I know what they are doing and I know that they are having great problems in putting the people in the street that they need, as we are, of course.

Mr. **Weiss**. If either or both of you had to guess as to what percentage of the wrongdoing you are able to identify and send investigators out on and file complaints on, what would you say?

Mr. **Armer**. I would say that in the outside of the garment industry we did a small study of compliance with the New York State minimum wage law, which is fairly similar to the Federal law, and we found a violation ratio of over 30 percent where the employer was violating the law in one way or another where we were able to establish it.

Incidentally, on child labor we found the higher percentage of violations of the child labor laws.

Mr. **Weiss**. And how much of that do you reach?

Mr. **Armer**. How much do we reach?

Mr. **Weiss**. Yes.

Mr. **Armer**. I would say that we probably investigate about 10,000 complaints a year in New York State, but we operate, I emphasize, on a complaint only basis, and the complaint comes about when an employee becomes concerned and he comes to us. The realities in New York City, and particularly in the garment industry, if the person is an undocumented worker, they are not going to come to us.

Mr. **Miller**. You basically outline a program of nonenforcement, without attributing motives. In a sense, it is do as you might with the manpower that you have available and do as they might with the manpower that the Federal office has available, considering the scope of the problem, it is just catch as catch can. I mean that is all you are doing.

Mr. ARMER. Any type of social legislation for enforcement purposes need the cop-on-the-beat approach where you have people who come in unannounced and there is a certainty that they are going to come around from time to time and that they are able to take a pretty good look at a fairly large segment of employers where there is no complaint, and we do not have that.

Mr. MILLER. Neither of your offices get the benefit of the $81,000 that was turned in?

Mr. ARMER. No.

Mr. DOWLING. I would just like to say one thing, Congressman. With respect to what Mr. Armer said in terms of the way the law is enforced, in terms of our two investigations that we initiated with labor, these have been target investigations. These have not been as a result of complaints. These have simply been target investigations in certain areas.

I have to tell you, we have probably gone to in excess of maybe 125 to 150 sweatshops and what we found was, I would say, 90 to 95 percent of them in some way have violated the labor laws. And more important is there is sort of a criminal underclass associated with sweatshops, where you are talking about people with loaded guns, you are talking about people who have tried to bribe our investigators, you are talking about employees who try to collect their wages and are physically assaulted. And Senator Leichter, I am sure, will enter the whole organized crime problem. But there is just this underclass element. You are not just talking about labor law violations. You are talking about other kinds of situations and I think that our second sweatshop investigation and the results of that when they are announced in court in the next month or so, will more or less show that.

But that, I think, is one other fearful aspect of this whole issue because you are not just talking about labor law violations. It goes beyond that. When you are talking about people who run these places, these are people who have criminal records and criminal backgrounds and criminal histories and who operate with relative impunity, and that, to a certain extent, frightens us in terms of where are we going with this thing.

Mr. WEISS. Thank you very much, Mr. Chairman.

Mr. MILLER. On the question of the recordkeeping, your testimony is that obviously it is intentional that records are not kept and that makes it very difficult to reconstruct actual wages that were not paid, and you end up making your best estimate, which you indicate was conservative.

If I understand you right, the recommendation is that that should be a separate violation, that there should be a separate civil penalty for each instance in which an employer fails to keep for a single employee.

Mr. ARMER. That is a recommendation made by the Industrial Commissioner Lillian Roberts to the Governor in the legislature.

Mr. MILLER. So it is not a question of whether you keep records generally, but it is a question of whether you keep a record for each one of your employees?

Mr. ARMER. We feel that it has to be that specific, yes.

Mr. **Miller**. Thank you very much.

Excuse me. Obviously, one of the key components of this is how often, when you get into this, are you able to locate the worker. Now, you respond on a complaint basis, but once you start looking at an employer's records and start to reconstruct them, how often are you able, in fact, to get money for an individual employee?

Mr. **Armer**. The success ratio is certainly not spectacular on minimum wage. Under the state law we have been really concentrating on the industrial homework type of complaint.

To locate an employee, unless they have come to us or an employee advocate has come to us and is assisting us, it is pretty difficult.

Mr. **Goldberg**. If I might ask a couple of questions. One, both offices have seemed to target most of their work in the garment industry. How much work has either of your offices been able to do in some of the other industries that Mr. Sweeney talked about this morning, like security guards, nursing homes, restaurants, and janitorial services?

Mr. **Armer**. The Division of Labor Standards has between 100 and 200 others and they are spread across the gamut of other industries. We have them in the restaurant industry, we have them in the building services industry, we have them in nursing homes, yes.

Mr. **Goldberg**. And the second question I have is since the change in the New York State law, which has the enhanced underpayment penalty, has either of you noticed a more forthcomingness on the part of the underpaid workers, or is there a greater cooperation with the workers as a result of the opportunity to recover more than just their actual underpayment?

Mr. **Armer**. I am not sure that they are all aware of what is available for them under the law. There has been employee organizations and many of them have come forward and obviously they have a concern and responsibility, and they have disseminated the information to their members and I think that is a positive thing.

Mr. **Miller**. Thank you very much.

I understand Senator Leichter is here.

Senator, your prepared statement, if you have one, will be placed in the record in its entirety so feel free to proceed however you are most comfortable.

STATEMENT OF HON. FRANZ S. LEICHTER, NEW YORK STATE SENATOR

Thank you very much, Mr. Chairman. Congressman Miller, we welcome you to New York. I am really delighted at the efforts that you have expended in dealing with the problem of sweatshops and the exploitation of workers, and of course, it is a particular pleasure to find my own Congressman, a very hardworking Congressman here, Congressman Ted Weiss.

I think it is important that the subcommittee come to New York because, sadly, I think we have the largest concentration of sweatshops here in New York. We have had a frightening and appalling increase in the number of sweatshops, particularly in the garment industry, here in the Metropolitan New York region. We estimate that there are over 3,000 sweatshops and maybe as many as 50,000 people employed in these sweatshops, workers who are being denied the basic rights that everybody who sits at the work table in America is to have.

Unfortunately, there has been a real breakdown in law enforcement on the federal level, state level and city level. I do want to except from any condemnation the very fine State officials that you have had here, and certainly the attorney general of New York State for the first time has brought the resources of his office to bear on the problem, but the State of New York cannot be proud of the extent to which we have reduced the number of employees inthe Labor Department that is to deal with the protection of workers' rights.

I believe that many things need to be done. I realize that your subcommittee is particularly, of course, focusing on a bill that you are sponsoring, a very fine bill that I want to heartily endorse. I think we understand, and I know that you and Congressman Weiss certainly do, that much more is needed. I think the growth of sweatshops is a modern phenomenon that reflects the many problems in our society and also a breakdown in the manner in which we protect workers' rights. I think legislative action will be taken, I think that enforcement action will be also taken because irrespective of how fine the legislation is that we pass, whether it be in Congress or in the State legislature, if we find an unwillingness on the part of the executive to enforce the laws, as I think is certainly the case with the Reagan administration where our laws become just empty scraps of paper.

Let me say that the Federal Government as far as we have seen, and we have conducted, I would say, over 150 inspections of sweatshops, and my counsel has been particularly active not only in inspecting sweatshops but in issuing reports on sweatshop conditions, and it is our experience that the Federal Government has had almost no success in slowing the growth of this new industry,and probably for three main reasons.

One is the present law, the Federal law we are addressing, is flawed.

Second, there is insufficient enforcement staff.

Third, more recently, there has been a lack of enforcement will on the part of the Reagan administration.

The penalties provided in the FLSA are simply not up to the task posed by the resurgence of the sweatshops. Penalties actually imposed on shops are simply considered a part of the normal cost of doing business. The amount of penalty is the same as the back wages owed the workers, so there really is no penalty in the first place, and the provisions whereby recovery is not claimed by workers it is given back to the employer is ludicrous.

Last year literally millions of dollars in recoveries were not claimed by workers, many of whom were undocumented and did not want to come forward to get what was theirs'.

Trebling the recovery, as you have proposed, and giving unrecoverable wages to the Federal Treasury would go a long way toward making the penalty deterrent more creditable.

I want to address particularly the failure to act by the Reagan administration, which is particularly glaring because just a year ago Secretary of Labor Donovan conducted a much publicized raid, although I understand the raid was done in secret and afterwards he had a big press conference and he announced there was going to be a war on sweatshops and he had been in one of these sweatshops and it was really intolerable and the Reagan administration was not going to allow these sort of conditions to exist.

But 1 year later we find that that war is still to be waged. One year later we find there has been an actual reduction in the number of inspectors, reduction in the number of inspections, reduction in the number of enforcement actions that have been taken as a consequence of the inspections. It is evident that Secretary Donovan's raid was nothing but a publicity stunt.

We have gone into the building where he conducted his inspection, 125 Canal Street, and we find that conditions are as bad there as they ever have been.

In this connection, I think a matter that your subcommittee will want to look into, is the inability to find out from the Labor Department what sort of actions they have taken. They claim confidentiality on many of their administrative actions. I suspect that we will find either that they have not taken any action at all, or possibly in some instances they may be embarrassed as to whom the action was taken against.

But efforts that we have made under Freedom of Information and actually through Members of Congress to get this information has been unavailing and I understand that you have had no more success. It would seem to me that the public is entitled to know what enforcement action, if any, was taken, and I am sure that the subcommittee is going to pursue this, whether legislatively or some other way.

So 1 year later after this great raid, we meet here and deplore the fact that there is no war on sweatshops, and indeed, the sweatshops continue to grow. It is hard to believe that in 1982 we should have conditions in garment facilities that are as bad as those that some 60 or 70 years ago caused the tragic Triangle Shirtwaist fire.

I would hope very much that we would find a commitment on the part of all levels of government to deal with the problem of sweatshops.

I just want to say one final word, and that is that in our investigation we have found an alarming involvement by organized crime in sweatshops. Obviously, when you have an industry that is on the fringe of the law, there are opportunities for organized crime to step in, and particularly with the undocumented workers, poor people who are desperate for work and will take it under any condition and who will not complain, it gives the real opportunity to organized crime to exploit them.

We find that primarily in trucking companies organized crime is very much involved in establishing sweatshops. We have taken this matter up with the attorney general here in New York State, I know he is concerned. But I think in this area also a greater Federal concern and involvement is required.

Thank you.

Mr. MILLER. Thank you.

Mr. WEISS. Thank you very much, Mr. Chairman.

I just want to underscore the role that Senator Leichter has played over the past years in calling clear public attention to this problem and attempting to move jurisdictions at all levels into correcting this condition. I think that the Nation, especially those workers who have had no help and are being exploited, as you indicated, really have expressed and will be expressing their gratitude to you.

Mr. LEICHTER. Thank you very much.

Mr. WEISS. I think also we ought to recognize the marvelous conference that the Senator had this past weekend calling attention again to how the New Deal gains, which this country thought were permanent gains, are being tremendously eroded because of the deliberate attempt on the part of this administration to roll the calendar back, never mind the cost.

There had been some testimony, Senator, just before you took your seat at the witness table, to some legislation that had been proposed to try to make the focus, I guess, and to make more meaningful some of the penalties and some of the provisions of law in this effort.

Could you comment at all as to what you see as to the possibilities of success in the New York State Legislature in some of those approaches, and as to whether even assuming that that is done, whether that will mean very much without an input by the Federal Government into this area.

Mr. LEICHTER. I think there is definitely action that New York State can take legislatively. I proposed that we enact the same sort of registration statute that your State, Congressman Miller, has pioneered in, and in fact, we had State Senator Montoya, who is a supporter of our legislation here in New York, and we called for a national registration law.

I think there is also much that we can do to tighten up our regulation of the truckers. Unfortunately, the State legislature tends to move sometimes rather glacially, and has not really focused on this problem. I do not think there has been that sort of social concern, not only among legislators, but I think among the public at large, at the conditions in sweatshops that will bring us to legislative and executive action.

But I am glad that you underscored in your question the need to have proper enforcement tools. I am very concerned about the cutbacks that New York State has made in its enforcement divisions dealing with the problem that we are looking at.

It is evident to me that New York State just does not have the resources to really do the job. Also, I think we are sort of limited, even though there is legislative action, as I stated, that we can take and that we are pushing, and I am delighted to say the International Ladies Garment Workers Union has been very supportive of this legislative effort. But I think that we need the Federal laws enforced, and that really means stiffer penalties, as you proposed, and a beefed up enforcement effort.

Mr. WEISS. Thank you very much.

Thank you, Mr. Chairman.

Mr. MILLER. I also want to thank you not for just your testimony this morning, but for your help in keeping this issue alive. As you point out, it is a year since the dramatic, theatrical raid took place.

We, too, have been unable to find that there has been any attitudinal change in terms of stricter enforcement or concern for the very people that the Secretary expressed such strong concern for just 1 year ago. That is why we have asked several times for him to bring forth the legislation that he proposed after that raid. It has obviously not come forth and that is why we decided to go ahead, but it is in part because of your activities here that has continued to help keep the issue in the forefront of the public's mind. Obviously, accountability has not been had by the Federal officials and we have obviously already heard the problems you have in manpower at the State level.

So thank you very much for your help on this issue.

Mr. LEICHTER. Thank you for your kind words, and above all for your attention to this problem.

Thank you very much.

Mr. MILLER. Next we will hear from a panel made up of Mr. Anthony Conticelli, executive director of the Coat and Suit Manufacturers' Association; Mr. Arnold Schwedock, who is the executive director of the Ladies' Apparel Contractors Association; and Alex J. Glauberman, Esq., who is the counsel for the Jewelry Manufacturers' Association.

Gentlemen, welcome to the committee. If you would proceed as you are most comfortable, and if you have prepared statements they will be included in the record in their entirety.

If you would identify yourself for the recorder, please?

STATEMENT OF ANTHONY CONTICELLI, EXECUTIVE DIRECTOR, AMERICAN CLOAK & SUIT MANUFACTURERS' ASSOCIATION, INC.

Mr. CONTICELLI. I will go first because I think I am the oldest of the three and I am more warm than they are!

I have no prepared statement.

With great feeling I have read the legislation proposed by you, introduced by you, Congressman, and I find that it is touching the interest you are taking in an industry where the sweatshops instead of disappearing have increased tremendously since the act was passed in 1938.

I don't want to go back into the fact that I worked in one of these shops as a 12-year-old boy when as an immigrant I landed in New York. That is why I feel so much when these so-called "drives" are started and you start to get passionate and you follow them and then you will see what happens. Nothing. A lot of fizzled out.

The Secretary of Labor, I would like to explain to him what homework means. I saw it. Every family without having a baby had a baby carriage to go and the children should go and pick up the work and bring it to the mother and at night they all sit around the table and do that work. You saw concrete workers putting buttons on pants, because they had no zippers in my days, it was only buttons and buttonholes, making buttonholes at home.

I cannot object but one word that I heard here this morning. It was certainly all well put. I didn't prepare nothing, I have this in my blood so I did not have to.

I wanted to reiterate again about enforcement, why you don't find the workers after they are entitled even to triple retribution, because by the time they complain and the investigation is started and a lawyer gets into the act and delay and delay, by that time most of them have disappeared.

Even though you pay these workers triple damages, and you also have in the act the liquidated damages, you must have vigilance to see that that money does not go back to the pocket of the guy who paid it. You have that danger, too, because the exploiter that you are investigating may also be exploited by somebody in back of him who furnishes that work. You are only attacking the contractor, where you may not even find enough money for you to pay those workers plus liquidated damages that you want.

So I think here I would like to see, if possible, if the atmosphere in Washington would change, Congressman, if this could be done to put the two of them together. Me not being a lawyer, maybe we would have a conspiracy here to defraud the workers of their just due. Then it would become a criminal offense and I think they would think twice before renting a few machines and starting a shop. A lot of them don't even own the machines, they just rent these machines.

I was going to be brief, but I can talk probably much too long.

A lot of the State laws that have been passed I do not go for. This must be Federal. Like your State has passed a law and they are trying to do it in New York, then all you have to do is go to a next state and begin all over again. They will always find another sucker.

Thank you very much.

STATEMENT OF ARNOLD SCHWEDOCK, EXECUTIVE DIRECTOR OF LADIES' APPAREL CONTRACTORS' ASSOCIATION, INC.

Mr. **Schwedock**. I would like to say hello to Congressman Miller, with no slight to Congressman Weiss.

On October 1, 1981, I was scheduled to meet with you in Washington. I was there at the invitation of the National Coalition of Apparel Industries' Education Committee representing the Northeast Sector of the United States at that time, along with representatives from California, the Southwest, Florida, and the AAMA.

Regrettably, you were away from your office at the time. You were either in a committee meeting or on the floor of Congress. However, we were courteously received by your administrative assistant, John Lawrence.

I have a prepared statement now about the H.R. 6103.

My name is Arnold Schwedock and I consider myself privileged to appear before this Subcommittee on Labor Standards.

I am the executive director of the Ladies' Apparel Contractors' Association, Inc., a trade association incorporated in the State of New York. Our membership consists of apparel cutting and sewing contractors, approximately 200 in number here in the Empire State. We are under contractual agreement with the International Ladies Garment Workers Union.

In a letter of June 8, 1981, to Mr. Henry T. White, Jr., deputy administrator, Wage and Hour Division, Employment Standards Administration, I stated, and I quote:

> "Any exclusion of Regulation 29, CFR Part 530 from the regulations governing "home workers" by Secretary Raymond J. Donovan will cause further injury to a women's apparel industry that is already in serious difficulty.

I further stated, and I quote:

> Protect the legitimate apparel contract who has a capital investment and thousands of workers who are employed in the legitimate factories. I would be only too happy to assist in any effort to put so-called sweatshops out of business, but do not create a new breed of unscrupulous employers, brokers, who would only distribute work to home workers.

And it is because of that, because of what I said about assisting at any time, and being as good as my word, I am pleased to be here today to go on record favoring Congressman Miller's bill, H.R. 6103, and I hope it will accomplish the results for which it was written.

However, should this not deter exploiters of those so easily exploited, then it should be amended even further at some future date, and more punitive action be inflicted so that the unscrupulous employers will learn that the exploitation of the American worker is deplorable and will not be tolerated.

Further, it is absolutely necessary that existing abuses be reduced by intensive enforcement of the legislation as provided and amended, and I believe every effort should be made to provide for additional funds for qualified enforcement personnel, both large enough in number and strong enough to vigorously enforce the law.

I would further recommend that all moneys gained on behalf of cheated workers in accordance with H.R. 6103, and when workers are not found and reimbursed, that such funds when returned to the Treasury be set aside and earmarked for the enforcement of the labor regulations of the land.

I would applaud the elimination of the sweatshop enterprises that undercover economy, that create unfair competition for our legitimate and responsible manufacturers and contractors who endeavor to make a reasonable profit while paying a lawful wage to their employees, and I might add, pay their required taxes to support Federal, State and city governments. It goes without saying that the sweatshops just do not pay any taxes at all. They do not pay payroll taxes for their workers and they do not pay the required taxes to any of our governments.

In conclusion, on behalf of the membership of the Ladies Apparel Contractors Association, Inc., and I believe I can safely state the entire organized apparel industry here in the Metropolitan New York area, those who maintain decent, clean, safe factories, and afford their workers the opportunity to work in our factories with decent rates, decent standards, and decent conditions; those who abhor unscrupulous employers who exploit workers; deplore the sweatshop images that hovers over our industry, which we do not like; and opposes industrial homework; that we favor the passage of bill H.R. 6103.

Now, I hope I am not embarrassing anybody here by going into something that may not be the subject matter for this meeting, but having your attention at the moment, I respectfully request that on all future voting on the floor of Congress, whenever you can favor our apparel industry by reducing imports or limiting imports, that you cast your vote to assist an industry that is seriously harmed by imports. I beg of you.

I thank you for this opportunity to appear before you today.

Mr. MILLER. Thank you.

STATEMENT OF ALEX J. GLAUBERMAN, ESQ., COUNSEL, JEWELRY MANUFACTURERS' ASSOCIATION, INC.

Mr. GLAUBERMAN. My name is Alex J. Glauberman. I have been counsel to the Jewelry Manufacturers' Association here in New York for about 20 years, and since you have put me on the panel with these garment industry fellows, let me read you the following, and I will identify the source after I finish.

"Substandard and hazardous working conditions are rampant in many of the 1,200 manufacturing plants." A reporter for the paper, which I will identify later, spent 18 months working in and investigating fashion manufacturing plants. He found the following conditions:

> Workers constantly exposed to hazardous chemicals and fumes because of inadequate ventilation, storage or labeling; illegal home work operations below minimum wage pay scales; violations of child labor laws; and even fraud on the part of some shop owners; ineffectiveness of state and federal agencies to inspect the myriad manufacturing operations and to crack down on the violators; violations of fire safety laws, with fire escapes and corridors often blocked with debris.

Many of the smaller shops were tucked away in old textile mill complexes and garages. The large pool of unskilled and often immigrant labor has led to rampant labor law violations, this series reported.

> Many firms hire and lay off employees, sometimes on a daily basis, to avoid paying minimum wage and other mandatory benefits. Some firms will "rotate" 8 or 10 people for every job slot.

The worst abuse the reporter found was in the homework shops, which have been illegal since 1936, but continue to function anyway.

One woman reported spending 32 hours at home and being paid $57.02 before taxes. That came to $1.78 an hour.

> In 1980 state investigators closed more than 60 home operations, many using Vietnamese refugees. None of the operators were charged, however. Some shop owners, several workers said, allowed their employees to collect unemployment insurance during the lay off periods only if they kicked back a certain percentage of their weekly check to them.
>
> State and federal agencies have cited many of these firms for violations ranging from fire code violations and unsafe working conditions to flagrant abuses of state labor laws. However, many violations often go uncorrected because agencies lack the manpower to keep constant tabs on the 1,200 firms.
>
> The problem is compounded by many marginal firms that close in one location and reopen in another.

Now, we are all very well conditioned by what we have read and our own experiences to know that this obviously refers to the garment industry. The hell it does. It is a study made of 1,200 jewelry manufacturing plants in and around Providence, R.I. It appeared in the Providence Journal in the spring and early summer of 1981.

I was joking about my association with these gentlemen from the garment industry because I happen to be executive director and counsel to the Associated Corset and Brassiere Manufacturers, counsel to the New York Skirt and Sportswear Manufacturers' Association, and counsel to the United Infants and Childrenswear Association, which includes the manufacturers of children's dresses, and I have known these gentlemen for many, many decades.

I join with them and I join with President Sol Chaiken, my City College classmate, in their support of H.R. 6103 insofar as it affects the garment industry.

But the American Jewelry Manufacturing Industry is also very distressed. One of its greatest concerns now is the rising competition from foreign manufacturers. In calendar year 1981 imports increased by 30 percent over the previous calendar year to a total of $888 million worth.

Of even greater concern, however, in this industry, is the unfair competition that we face from within this country.

Of course, I am referring to the production of jewelry by businesses which fail to meet the wage and hour requirements of the FLSA and all of the other Federal and State requirements affecting their businesses.

Like the garment industry, the jewelry industry is an easily transportable industry. In effect, you can transport it in a shopping bag, which is what they do when they go from Chinatown or when they go home from Queens or when they go home from Providence. The equipment is small, it does not require much equipment, the space required is small, it can be easily set up as a shop, and this is one of the difficult problems which face the enforcement authorities.

It is conducive to the employment of undocumented aliens, the distribution of homework, and the establishment of pieceworks at levels well below the minimum wage of the Fair Labor Standards Act.

We have seen a tremendous proliferation of small job shops and exploitative practices in the jewelry industry in the last several years. Work is diverted from legitimate establishments into the hands of these reprehensible operators in whose shops not only are wages substandard, but working, health, and safety conditions as well.

Here in New York jewelry firms that have been found to be in violation of fair labor laws continue to prosper. Payment of back wages to those who earned them if they can be located is an inconsequential penalty for violating the law.

The members of the Jewelry Manufacturers' Association are not in business to profit from the exploitation of underprivileged workers. We pay fair and decent wages and substantial fringe benefits in accordance with the terms of our union contract. We recently negotiated a new contract. Prior to the negotiations the average wage was $8.75 per hour in the industry, and the first year's increase, effective March 21, was another 60 cents per hour, or $21 per week.

That merely accentuates the advantages that these operators of jewelry sweatshops have in competition with our own people.

We believe that the unfair competition created by these unscrupulous businessmen would be greatly reduced if the offenders were required to pay three times the amount of back wages due. The proposed bill makes sense. Those who do not comply with what are hardly prohibitive minimum wage and hourly standards should pay for damages and should pay heavily. Honest and legitimate businesses can only profit by the adoption of this proposal.

On behalf of our membership and the membership of the other associations that I represent, I would like to thank you for your efforts to improve the FLSA and for the opportunity to express our thoughts on this matter.

Thank you.

Mr. Miller. Thank you.

[Prepared statement of Alex J. Glauberman follows:]

Prepared Statement of Alex J. Glauberman, Esq., Counsel, Jewelry Manufacturers' Association, Inc.

On behalf of the association, I am here today to support the enactment of H.R. 6103 which would provide for tougher penalties for violations of the Fair Labor Standards Act.

The American jewelry manufacturing industry is very distressed today. One of our greatest concerns is the rising competition from foreign manufacturers. Of even greater concern, however, is the competition we face from within this country.

I am referring to the production of jewelry by businesses who fail to meet the wage and hour requirements of the FLSA. The nature of our industry is conducive to the employment of illegal aliens, the dispersement of homework and the establishment of piecework rates, all of which frequently result in wage levels well below the minimum wage of the Fair Labor Standards Act. The last several years have seen a great proliferation of small job shops and exploitative practices in the industry. Consequently, work is diverted from our factories into the hands of these reprehensible operators, where not only wages are substandard, but working conditions as well.

Here in New York, the jewelry firms that have been found to be in violation of the fair labor laws continue to prosper. Payment of back wages to those who earned it—if they can be located—is an inconsequential penalty for violating the law.

The members of the Jewelry Manufacturers Association do not want to be in business profiting from the exploitation of underprivileged workers. We pay fair and decent wages and benefits according to the terms of a union contract.

We believe that the unfair competition created by unscrupulous businesses would be greatly reduced if offenders were required to pay three times the amount of back wages due. The proposed bill makes sense—those who do not comply with what are hardly prohibitive minimum wage and hour standards should pay for damages. Honest and legitimate businesses can only profit by the adoption of this proposal.

Thank you for the opportunity to express my thoughts on this matter.

Mr. Miller. Mr. Schwedock, you heard the testimony earlier today by other witnesses. Would you concur in the summary of their testimony that the enforcement by the Federal Department of Labor has been inadequate?

Mr. Schwedock. Absolutely. That is why I say perhaps, and I do not know what the law is on it, but any moneys that are recovered, maybe over a 3-year period, should be put back for that purpose alone. I do not know if that was the intent of H.R. 6103 or not when it said that the money goes back into the Treasury.

Mr. Miller. It goes back into the Treasury, but currently it is not set aside or earmarked for that purpose. It is one of the things that we are considering, especially if we continue to see this developing.

Mr. **Schwedock**. It should be used for that purpose. We can utilize that money that is recovered for the purpose of regulation, Federal regulation.

Mr. **Glauberman**. That was my idea. We have always felt that enforcement was inadequate before the budget cuts. What was required was a coordinated effort of all of the Federal agencies to get after these people because once you hit one violation with one of these shops you are hitting 20 violations.

Mr. **Miller**. What do you estimate to be the figure, and I do not know how you would estimate it, if it would be simply gross volume of business that is being done in this fashion or wages or what. Has your association made any estimate?

Mr. **Glauberman**. It is impossible to determine.

Mr. **Miller**. You consider it substantial obviously.

Mr. **Glauberman**. It is impossible to determine. It is all undercover.

Mr. **Miller**. I understand that, but in a sense of which you know about the volume of business which your industry does and the question of this being a drag on the industry, you consider it obviously to be a substantial volume. I mean, you feel the competition from it, so it is substantial enough.

Mr. **Glauberman**. We have no way of determining the volume.

Mr. **Conticelli**. But it must be substantial because as I said, there are too many now. You now need not a drive, you need a war. You need a fight, and I mean a real fight. It is not going to be easy.

Mr. **Miller**. Ted?

Mr. **Weiss**. Has there been any effort made by the industry associations to trace any of the sweatshop work products into the outlets? Do you follow it to the department stores or whoever sells the stuff?

Mr. **Schwedock**. Not that I know of. There has been no effort to trace.

Mr. **Weiss**. Do you know whether, in fact, I mean you talk about the unfair competition that the work poses, and I would assume that that would be a very valid concern. Do you have, in fact, examples of direct competition between work that is produced at $9.50 an hour or work that is produced at $1.78 an hour, side by side?

Mr. **Glauberman**. The products are unidentifiable. How do you identify a ring that ends up in a jewelry store? There are very few trade markings on a ring. You have a ring, a gold ring——

Mr. **Conticelli**. Excuse me. I go to stores. In fact, last Saturday my wife bought a jacket in Abraham & Straus. I always send my wife to the store. I was with her. Of course, we cannot buy so easily because my family is so indoctrinated against that they would not dare. If they brought something like that home, they would get thrown out with the outercoat. Anyway, I saw that the jacket that she bought is with a union label in the seam of the lining and it is made in the U.S.A. It is easy right there. Then I see no union label, made all over the world the way we have no control. Even the wage and hour division cannot know if they work 20 hours a day for $50 a month, not a day or a week but a month. This is the problem that confronts us, too, and maybe why there are so many sweatshops, too, because of this really tremendous amount of imports. The President says unilateral agreements to cut down. January and February increased in imports.

Not only that, but they should have won the war and we should have lost it because we are supporting their economy.

I'm sorry, I interrupted you.

Mr. **Weiss**. Let me give you a chance to channel your remarks in response to a question that I am going to ask.

I think that you have valid reason to be concerned.

Mr. **Conticelli**. Thank you.

Mr. **Weiss**. It seems to me that if, in fact, there is that validity of concern for the stuff that is imported, and much of that sutff, I gather is identified. They carry on the label it is made in Korea, made in Hong Kong, made wherever it is made. Then you have other stuff in there that is not identified and the likelihood is that it is sweatshop work.

Yes, I think that our society as a whole has a very real concern about people being exploited and people working under unsafe conditions and so on, but the industry has a concern even above and beyond that. The concern is one of survival and whether, in fact, you are unfairly competed against by stuff that is manufactured overseas or stuff that is manufactured by the sweatshops. They are both going to have the same effect on you and so that is why I asked the question as to whether the industry is at all interested or has taken any steps at all to try to trace this stuff that is done by sweatshops because it is one thing not to have any effect on the kind of sweatshop operators that we have had described here. It is another thing if some of our more prominent stores are, in fact, selling that kind of stuff. It occurs to me that that would be something that you would be doing under normal circumstances, trying to determine who, in fact, is selling this stuff and seeing what kind of pressure you can bring to bear to reduce their competition with you at those outlets.

Mr. **Schwedock**. Are you saying, Congressman Weiss, on the retail store level?

Mr. **Weiss**. Sure.

Mr. **Schwedock**. Well, if I remember correctly, I think it was Senator Leichter, stood in front of Macy's or on Seventh Avenue near Macy's and he held up some clothing made by a supposedly, I think, at that time a union manufacturer, I am not sure, or maybe a nonunion manufacturer, I am not sure, which was made in sweatshops, and he got publicity for that day and that was the end of it.

I don't think it has any effect on the retailer. You know what the retailer is doing today? Today he is taking the couturier-type garment that is produced domestically and he is taking that sample over to Hong Kong and Taiwan and those places and making it directly for themselves so they can buy it cheaper than they could buy it from the designers that we have here in the United States.

Mr. **Weiss**. Yes, right.

Mr. **Schwedock**. They are doing everything to carry the merchandise for them and that gives them the greatest gross profit and markup.

Mr. **Weiss**. OK. But again, in a sense I think it is harder for a Macy's or whoever, and I am using them only because you mentioned Leichter standing in front of Macy's, for a legitimate retail outlet, it would seem to be harder for them to pass off their selling sweatshop work than their selling stuff that has been imported. There is a whole different kind of argument there. It seems that they would be engaged in that and it is easy to be a Monday morning quarterback or to sit back and give free advice. It is really what it is worth, right? Nothing. But at the same time, it does occur to me that as the industry you might consider taking some steps to try to find out who, in fact, is beating your brains in. If the sweatshop manufacturers had no outlets, there would be no occasion for them to engage in this work.

Mr. **Glauberman**. Well, we would have to have access to the works of nonunion manufacturers and be able to trace their cuttings into particular shops. That would take a vast intelligence operation for which the State and Federal Governments are certainly better equipped.

You just reminded me of a recent article or something that appeared on television, I do not remember which it was. It was of one of the most prominent dress designers in America, who supplies dresses to the First Lady, and they traced his work into a backyard shop in one of our boroughs. I think that was on Channel 7 or Channel 4, I don't remember.

Mr. **Conticelli**. A Long Island City shop.

Mr. **Glauberman**. But it is almost an impossible task to trace. What the retail stores would know, if they were interested, is if they buy garments made by manufacturers who are union manufacturers, then they could be assured that these are produced in compliance with all of the Federal laws and also with the union contract. All they have to do is look for the union label.

Mr. **Weiss**. There you go.

Mr. **Miller**. How many people does your association employ?

Mr. **Glauberman**. In New York City approximately 2,000. There are about 28,000 precious jewelry workers and about 28,000 costume jewelry workers in the United States, so it makes a total of about 56,000.

Of course, the garment industry figures are pretty well known.

Mr. **Miller**. Thank you very much for your testimony and for your time and support of this legislation.

The committee stands adjourned.

[Whereupon, at 11:50 p.m., the hearing was adjourned.]

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THE REEMERGENCE OF SWEATSHOPS AND THE ENFORCEMENT OF WAGE AND HOUR STANDARDS

WEDNESDAY, MAY 12, 1982

House of Representatives,
Subcommittee on Labor Standards,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2257, Rayburn House Office Building, Hon. George Miller (chairman of the subcommittee) presiding.

Members present: Representatives Miller and Erlenborn.

Staff present: John Lawrence, staff director, Grace Lewis, staff assistant; Michael Goldberg, chief counsel; Vincent Trivelli, research assistant; Edith Baum, minority labor counsel.

Mr. Miller. The Subcommittee on Labor Standards of the full Education and Labor Committee will come to order for the purposes of receiving testimony on H.R. 6103.

One of the primary responsibilities of a civilized society is to protect the weak. And that is what this bill, H.R. 6103, does, and what this hearing is all about.

This bill restates more emphatically our national commitment to protecting those workers in our society who are least able to protect themselves from cruel exploitation. It is clear from our earlier hearings that virtually all segments of responsible society agree with the need to enhance the enforcement provisions of the Nation's minimum wage law.

All agree that the current law provides little to discourage unscrupulous employers from exploiting defenseless workers. All agree that the current sanctions frustrate the good efforts of law enforcement officials.

Responsible labor and responsible management have joined together in calling for enhanced law enforcement sanctions. Law enforcement officials at the State and the Federal levels have agreed that tougher sanctions are essential to discourage the exploitation of lower paid workers and the flaunting of Federal Fair Labor Standards Act.

The Secretary of Labor proposed tougher penalties a year ago, and has called upon the business community for support. And with the economy worsening and the number of low-paid workers increasing, it is more essential than ever that their wages be protected.

While there is much that needs to be done to improve our minimum wage laws and assure adequate wages to all Americans, we cannot do it all now. But, on these small but essential changes there is widespread agreement and there is an immediate, a desperate need. These can be done now. These must be done now, and that is the purpose of this hearing.

Our first witness will be Mr. William Otter, who is Wage and Hour Administrator from the Department of Labor.

Welcome to the committee, Mr. Otter.

Your prepared statement, if you have one, will be placed in the record in its entirety, and you may feel free to proceed as you are most comfortable.

STATEMENT OF WILLIAM M. OTTER, ADMINISTRATOR, WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY HEBERT J. COHEN, DEPUTY ADMINISTRATOR, WAGE AND HOUR DIVISION, AND FRANCIS X. LILLY, DEPUTY SOLICITOR

Mr. OTTER. Thank you, sir. I would appreciate the opportunity to introduce two people here at the table, Deputy Administrator Hebert Cohen, and Deputy Solicitor, Mr. Francis Lilly.

I am pleased to have this opportunity to testify here today on enforcement of the Fair Labor Standards Act (FLSA). As you know, this law provides minimum wage protection for over 61 million workers. Clearly, enforcement of the Fair Labor Standards Act is a serious matter, particularly for employees denied the basic earnings guaranteed by the act. It is also a concern for the thousands of honest employers who voluntarily comply with the act but face unfair competition from those employers who willfully and repeatedly ignore the FLSA wage standards.

The administration shares your concern that the FLSA be vigorously enforced and that the law be strong enough to assure that all workers covered by the act be protected as intended by the Congress.

As you know, the General Accounting Office conducted a comprehensive study of the Department of Labor's administration of the FLSA and made a number of specific recommendations to the Congress regarding legislation to strengthen the enforcement provisions of the act.

We are carefully considering these recommendations as we determine what is necessary to strengthen the enforcement of the FLSA. GAO specifically recommended that:

1. The Department of Labor should be given authority to assess civil money penalties of sufficient size to deter recordkeeping violations.

2. The Department should be given authority to assess civil money penalties of sufficient size to deter violations of the minimum wage and overtime requirements of the act.

3. Finally, the Portal-to-Portal Act should be amended to toll the statute of limitations when FLSA violations are formally assessed.

I would now like to turn to the Department's recent accomplishments in the enforcement of the FLSA. During fiscal year 1981, Wage and Hour Division compliance officers found that almost

396,700 employees were underpaid over $52.9 million in violation of the minimum wage provisions of the act. Some 291,800 employees were underpaid over $74.6 million in violation of the overtime pay provisions. Based upon the $71.1 million in underpayments disclosed during the first 6 months of this fiscal year, we expect total findings for fiscal year 1982 to exceed the $127.4 million found due in fiscal year 1981.

Now, Mr. Chairman, I would like to point out some recent steps we have taken in strengthening our enforcement efforts under the FLSA. In the past, employers have been allowed to retain back wages owed to employees who could not be located. This practice resulted in an unfair "windfall" to employers.

In an attempt to remedy this situation, we have been conducting a pilot program which entails the following in our region in Dallas. Where an agreement is reached with an employer to voluntarily pay back wages due, we have been successful in having employers stipulate that if the employees due back wages cannot be located, the unpaid wages will be paid into the Treasury.

We are now expanding this practice to other sections of the country. However, I must emphasize that under the current act, this procedure can only be utilized when an employer agrees to its use.

Last August, a fiscal year 1982 budget amendment was developed which provided the Wage and Hour Division with an additional $6 million and 197 positions in support of the administration's immigration and refugee policy reform package. These resources, which have been devoted to a special targeted enforcement program [STEP], were proposed for the purpose of strengthening labor standards enforcement to reduce the economic incentive for employers who employ illegal aliens at substandard wages.

In the 3 months that the STEP has been in operation, we have completed 3,000 investigations under this program. These investigations have uncovered a total of $7.6 million in unpaid wages owed to 36,000 employees. A total of $5.2 million in underpayments have been restored to 30,000 employees so far, and I am certain that more wages will be restored as a result of litigation against employers who refused to voluntarily pay their employees as required by law.

Subsequent to the development of the STEP budget amendments, the President established a goal of a 12-percent reduction in the Department's expenditures. However, for the Wage and Hour Division this reduction was largely offset by the additional $6 million I have referred to.

I am sure the subcommittee would be interested in our recent enforcement activities involving the homeworker regulations. As you know, in lifting the ban on homework in the knitted outerwear industry, the Department committed its resources to a concerted compliance effort to insure that homeworkers are employed in compliance with the FLSA.

During the period from October 1, 1981, to April 30, 1982, Wage and Hour Division compliance officers conducted compliance actions involving 134 establishments that employed homeworkers. In 50 of these cases, 1,761 homeworkers were found to have been underpaid. Underpayments amounted to $1.3 million in minimum wage and overtime pay violations.

We have achieved this record as a result of a concentrated effort to improve compliance with the homeworker regulations, particularly employers in the garment industry. This effort includes an ongoing program of close contacts with labor unions, employer associations and individual employers to insure that homeworkers receive the protections of the act.

Mr. Chairman, before I conclude, I want to reiterate that this administration remains committed to a vigorous enforcement of the Fair Labor Standards Act. My colleagues and I will be happy now to answer any questions that you and the members of the subcommittee may have.

Mr. MILLER. Thank you.

In your testimony you cite the GAO study and I believe it was one of their conclusions that there was very little in the current law to discourage somebody from violating that law.

Mr. OTTER. Yes.

Mr. MILLER. Do you agree with that?

Mr. OTTER. Yes. They discussed those provisions which exist and their apparent ineffectiveness. There are criminal sanctions, of course, in the law at present, and they discussed the relatively small number of criminal cases successfully brought. There are, of course, liquidated damage provisions for a willful violation, and they stated I think in the report that all too often they are not sought because the employer can only be assessed with a court action, and so many of the cases are settled before court action, so that they are not often an element.

Mr. MILLER. If that is the case with liquidated damages, then what are the tools available to you?

Mr. OTTER. I think quite clearly that the sanctions that are in the law could be improved. I think this is a conclusion of the GAO, and it is a conclusion I think as indicated by the Secretary of Labor. The opportunity to increase the use of existing sanctions should not be overlooked, and I think in every case, where possible, a criminal action should be brought, if it's clear that there has been that kind of a violation.

So I am not excusing or trying to say that the existing sanctions are useless. But I think it's clear that an additional set of improved sanctions to the law are desirable.

Mr. MILLER. What is your opinion of the sanctions in my legislation?

Mr. OTTER. They respond to two particular areas which need response. That is, they provide, as I understand, a sort of punitive or liquidated sum of three times the wage for every violation found, and they provide for a return to Treasury of unclaimed wages. I think both of those are goals which we would agree with.

These techniques, opposed say to the GAO report, which referred to liquidated damages as opposed to a multiple of the wages involved, change slightly the perspective, because where you are dealing with a bad case, recordkeeping, for example, there may be a violation in itself of which there is really no measurable, provable wage damage, and it would not be remedied by the wage situation alone.

However, on top of the recordkeeping situation, we sometimes have unwilling employees who either just disappear or won't testify in their own behalf, and we are not able to get all of the employees really on the record as to the violations we are seeking to prove.

In this case, you would be limited in your damages, in the triple damage situation to those cases where you proved a back wage violation. In the civil money penalty situation, you would not be tied to the proven wage.

So, in this sense of the word, I think we can look at other remedies and their effect as well.

Mr. MILLER. What is your ability under current law to strengthen the recordkeeping provisions which you could do administratively?

Mr. OTTER. Under present law, procedure on recordkeeping alone is in the first instance a finding of a violation and getting a commitment to honor the law. Where there is a falsification of records and we are able to collect back pay, of course, quite clearly the sanction is the back pay collecting only.

On the second violation discovered, we normally would seek an injunction as a repeat activity under section 17 of the law, and, following that, if we investigate and after such injunction is obtained, we would seek contempt. Those are the steps the solicitor has used and appear to be the only ones we can follow in the law since there is no specific monetary penalty besides back pay involved in the recordkeeping violation.

Mr. MILLER. In the testimony we heard in New York late last month, it appeared that the intentional bad recordkeeping was the single greatest hurdle to enforcement of the law. In fact, State officials that testified that it was in the employer's self-interest to keep shoddy records because, at that point, putting together the information necessary to determine whether or not a violation has in fact occurred, or going back and trying to restructure who are the individuals to whom payment was due, becomes very difficult.

I think at one point they were recommending to the State legislature that a fine per individual record be assessed, if there was a failure to keep the adequate records. They were recommending a flat fine, whether it was $50 or $10, whatever the amount was. But is that also true in terms of your enforcement, you also try to restructure wages owed, wages paid?

Mr. OTTER. We, of course, as I say, can go for the full liquidated damage on top of wage in a willful case, but the recordkeeping violation of itself may show willfulness, but it does not of itself incur a separate damage. I believe in the testimony in New York there was a State provision either recommended or in effect in New York State which had a fairly low dollar amount per violation, and they explained how they could accumulate those and build up a pretty good-sized penalty.

The Department originally recommended a minimum of $2,500 and I think in looking at the amount of the $2,500 penalty for recordkeeping, it would be clear that if you went per violation you would have a multimillion-dollar claim. So it depends on how you would interpret that violation.

It was our intent that it be for a recordkeeping violation as a whole, up to $10,000, in civil money penalties.

Mr. MILLER. Per establishment, not per employee?

Mr. OTTER. Yes.

Mr. MILLER. What they were doing in New York, I think, was on individual records of the employees they were assessing a penalty. Your recommendation is what you have considered would be assessment of that per establishment.

Mr. OTTER. Yes, that is right. I would like to add, of course, that that is a departmental view, though. It has not been fully approved by the administration or OMB, but that was what we have developed internally in the Department.

Mr. MILLER. Of the $127 million that you found due in fiscal year 1981, how much of that has been returned to employees?

Mr. OTTER. I will check the record. I believe about 61 percent is our effective return rate. We will give you a dollar figure. Our current records here show a return of $95,167,000. However, it is broken out for all wage programs, and not just Fair Labor Standards, which amounted to $83,568,000.

Mr. MILLER. What about the distinction of how much went back to the employer and how much went back to the employee?

Mr. COHEN. That would be for all programs we found the total of $143 million. That is Government contract programs as well as the FLSA. The figure we have here is that $95 million of the $143 million was agreed to be paid by the employers, so the ratio would probably run the same. Of the $143 million, $127 million was under FLSA.

Mr. MILLER. So you are saying 63 percent of that went back to the employees?

Mr. COHEN. Yes. That is generally what our agreed-to-pay rate runs about.

Mr. MILLER. And the other 40 percent?

Mr. COHEN. That would be retained by the employers, yes, for various reasons, either we could not locate the employees, the case was not suitable for litigation, or because of the small number of employees involved or small amounts of money involved.

Mr. MILLER. I assume you agree that should no longer be the case, that their employer should be able to retain the difference.

Mr. OTTER. That is right. We in the Department, as indicated by the Secretary, have been of the view that the unclaimed wage for Fair Labor Standards Act violations should go to, in this case, either Treasury or to the Department. In other words, there is an issue of where it goes, but it should not be retained by the employer.

This is, of course, a practice in the Government contracts cases, so that might be a deceptive twist here to these statistics, since we never give the employer back the unclaimed wage in a Government contract violation as we do because of the provision of the Fair Labor Standards Act.

Mr. MILLER. Is there any breakdown in your Department by occupation as to the number of employees who cannot be found? Again, there is substantial testimony both in my State and in others that in the garment industry, for one, and service industries, for others, that locating employees is a serious problem.

Mr. OTTER. I don't believe we have the statistics on it. But I believe that our people, the compliance officers, and our regional people have reported that where there is a high instance of illegal aliens, it's more difficult to find them and return the back wages. We have worked out a program with the Mexican consulate to try to locate them in Mexico for the return there, but rather than tell you the dollars involved, I can only say indications are, where illegals are concerned, the percentages of unreturned dollars are higher.

Mr. COHEN. Mr. Chairman, we do have statistics by Standard Industrial Code, by SIC code, although not by occupation. We do have them by industry as to investigation; back wages found due, yes, sir.

Mr. MILLER. The best of all worlds is to hire an illegal alien at subminimum wages and take your chances.

Mr. OTTER. Yes, that is true. I think it relates not only to the likelihood that he won't claim his wage, but the likelihood that he won't complain of his problem, and, of course, quite clearly, since he won't come to us, he is not likely to retain private counsel.

I think that might be another element in comparing the triple monetary penalty based on the wage to the civil money penalty enforced by the solicitor, because I think in most cases the illegal is not going to retain counsel whereas an American employee who has a substantial amount of money due could easily sue under 16(b), but we are not likely to find that.

Mr. MILLER. Finally, you note on page 4 at the bottom, that under your Wage and Hour Division, compliance officers conducted compliance actions involving 134 establishments that employed homeworkers, and in 50 of these cases you found 1,700 homeworkers who were paid subminimum wages.

Mr. OTTER. Yes.

Mr. MILLER. That is an awful lot of people in 50 establishments.

Mr. OTTER. Yes, it's high. I would like to say we have data here on the particular homework area or ban where these people are dispersed. In other words, this is a lump sum figure for all homework, not only in the remaining six prohibited areas, but in the knitted outerwear and other areas where it's permitted, so we can give you a spread by each of those, if you want, but it is in various parts again.

Mr. MILLER. Let me ask you this; that is, 50 establishments, or I guess actually the gross figure is 134 establishments, were there no violations in those other establishments other than the 50?

Mr. COHEN. That is correct.

Mr. MILLER. None?

Mr. COHEN. There may have been recordkeeping violations possibly. We are only capturing in this reporting system the monetary payments due.

Mr. MILLER. What do you estimate the homework establishments to be in the United States in numbers?

Mr. COHEN. We don't know.

Mr. OTTER. I have no sound estimate of the number. There is a tremendous lot of homework going on, of course, in areas not prohibited. In my home State in Kentucky, in the mountains, they make dolls and things like that, unprohibited. But I can't give you a figure on all homework in the United States.

Mr. MILLER. From the testimony again we have received in California and New York and elsewhere, 134 establishments would be a drop in the bucket, if you are finding that number, I mean if you just take the 1,700 per the 134, it's a rather outstanding number.

Mr. OTTER. Yes. Of course, in those States it is prohibited entirely by law and there are State sanctions in both New York and California.

The fact is that it's a very difficult area to investigate, and that is without regard to which one of the particular homework areas involved, because the employers very often smuggle goods out of the factories. They will have a legitimate operation to cover their inventory or try to cover it, and then they will have outlets of goods out to the homeworkers sometimes.

Sometimes legitimate employees take them home and do the homework on the side. But the fact is that it is one of the more difficult areas of investigation, and takes a lot of input of time, a lot of sifting of information and informants, and so on, to locate.

Mr. MILLER. Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Otter, I was not here when the hearing began, so this question may already have been asked. But Secretary Donovan, in a speech to the Business Roundtable, made reference to changes in the law necessary to beef up enforcement of the Fair Labor Standards Act, and to my knowledge, no legislation has been sent up here to the Congress to implement those recommendations contained in the speech.

Do you know if such legislation is being prepared and the progress and prognostication?

Mr. OTTER. Yes, sir. I indicated earlier the Department position had been put into concrete form, that proposed piece of legislation is now in the Office of Management and Budget, and has not been approved yet by the administration.

Mr. ERLENBORN. So it's just awaiting OMB approval?

Mr. OTTER. Yes. OMB has not approved it. The elements are common to the Secretary's speech; that is the elements he mentioned there are those that are contained in the proposal.

Mr. ERLENBORN. In that bill that may be coming here, does it provide for triple damages?

Mr. OTTER. No; it provides for civil money penalties in two areas; that is in recordkeeping, willful recordkeeping violations, or willful or repeat violation of the minimum wage or overtime provisions from $2,500 to $10,000 per violation, in this case establishment, or as we say, investigation.

In addition to that, of course, it provides in a manner very similar to this proposal, H.R. 6103 that the unclaimed wage be returned to the Government instead of to the employer. However, it provides that that wages will be returned to the Department of Labor instead of to the Treasury.

Mr. ERLENBORN. Penalties then would go to the Treasury?

Mr. OTTER. Yes.

Mr. ERLENBORN. The employee ultimately would receive what back?

Mr. OTTER. I am sorry; I have to reverse. The civil money penalties got to the Department of Labor and unclaimed wages to Treasury; excuse me.

Mr. ERLENBORN. The wages would go to Treasury.

Mr. **Otter**. Yes.

Mr. **Erlenborn**. To be then claimed by the employee?

Mr. **Otter**. There would be a 3-year period during which unpaid wages could be recovered by the employee. They would be held in escrow over the 3-year period.

Mr. **Erlenborn**. Would there be interest owing to the employee?

Mr. **Otter**. No.

Mr. **Erlenborn**. We just have the free use of that money during the 3-year period?

Mr. **Otter**. Well, I suppose, it's strictly tentative, if an employee is not drawing interest, maybe it will give him some incentive to go and claim it sooner.

Mr. **Erlenborn**. I don't think they really need an incentive. If they know there is money there for them, I think they are going to claim it.

What about the civil penalties? You say they go to the Department of Labor?

Mr. **Otter**. Yes, sir.

Mr. **Erlenborn**. What is done with them? Are they then unappropriated funds for supporting some activities of the Department?

Mr. **Otter**. I think it was our feeling or intent that they be treated in the same manner as a child labor civil money penalty, which now also goes to the Department and is credited against the costs of the Department in investigating these cases since it goes back to that budget.

Mr. **Erlenborn**. But that would not then appear in the Department's budget, would it, and would not need to be appropriated?

Mr. **Otter**. It's not appropriated; that is correct.

Mr. **Erlenborn**. Do you have any idea what the dollar volume under child labor we are talking about?

Mr. **Cohen**. About $900,000 a year, somewhere in that range.

Mr. **Erlenborn**. Do you have any estimate as to what the amount might be in this proposed amendment to the Fair Labor Standards Act?

Mr. **Otter**. I would have to say it was a substantial increase from that amount.

Do you think we can make some estimates?

Mr. **Cohen**. We can provide an estimate based on our experience.

Mr. **Erlenborn**. I think this is one member who would like to know, and I suspct maybe some people on the Appropriations Committee might be interested as well.

[The information referred to follows:]

The Department of Labor estimates that under its proposal, civil money penalties collected for recordkeeping, minimum wage, and overtime violations could amount to approximately $3.3 million annually.

Mr. **Erlenborn**. I note that there is a substantial difference in the approach of the legislation the chairman has introduced and the proposed legislation relative to the imposition of triple damages and whether either civil fines or triple damages would be imposed for nonwillful or repeated violations.

Mr. **Otter**. Yes, sir.

Mr. **Erlenborn**. Let me read a couple of comments that are contained in the minority or additional views of Commissioner Robinson, member of the Minimum Wage Study Commission, and ask if you would agree that these are accurate.

He is basing these comments on research performed by or on behalf of the Minimum Wage Study Commission.

His one observation is:

> Nearly three out of four cases of noncompliance do not involve outright hourly wage underpayments at all. Instead, they represent miscalculations of highly technical Fair Labor Standards Act exemptions, such as employee credits for tips, meals and lodging and uniforms.

This is the conclusion of this member of the Commission, at least, based on the Commission's research.

Would you agree that it is correct?

Mr. OTTER. The nonwillful area, that is the difficulty particularly in an industry that is just newly covered, has not had any long background of experience with the implementation of the regulations, and is often innocent. I think, however, it's a cost of doing business, and I am sure in all businesses it's not or should not necessarily be unexpected.

Like all operations in conforming to a rather difficult law, there will be innocent and substantially innocent violations.

Mr. ERLENBORN. Talking about substantial, I presume that the regulations under the Fair Labor Standards Act are fairly substantial; are they not?

Mr. OTTER. Yes, sir.

Mr. ERLENBORN. And they are often very technical as well?

Mr. OTTER. Yes; that is true.

Mr. ERLENBORN. It may well then explain how the mom and pop grocery store or some small employer could, in a nonwillful fashion, violate the act?

Mr. OTTER. Yes; that is correct.

Mr. ERLENBORN. Another of the observations of Commissioner Robinson is:

> The overwhelming majority of all Fair Labor Standards Act noncompliance is unintentional. Only a small fraction of these violations are found to be deliberate or willful.

Mr. OTTER. Yes. The percentages are small. I refer to the study that was made. I think that something like a 5-percent violation level overall for employers, was found but in terms of recidivism or repeats, of course, it would be a small percentage of that group.

However, that is our job, to find all violations and to get restitution, regardless, and we try to do that.

Mr. ERLENBORN. I would agree with that, and actually these statements that I have read lead me not to the conclusion that we should relax enforcement of the act, but rather that triple damages should be applied in cases of repeated and willful violations where they will be a real deterrent for those who willfully violate the act rather than in all cases.

If the vast majority of cases are unintentional and technical violations, it seems to me to be a matter of overkill to impose triple damages on employers who have violated the act in a technical, nonwillful manner.

Mr. OTTER. I think essentially a major aspect of the law is that it is a contract of employment, an element of a contract of employment, and our job is to enforce that contract. Like most contracts, you don't presume a willful intent to violate until you have adequate proof of it. So, I agree that we can't classify all violations as of that nature, and we don't attempt to treat the first investigation or initial violation in that manner.

However, again, we have that discretion under the present law, and I think our record shows we have not sought punitive or liquidated damages in cases of the innocent violation.

Mr. **Erlenborn**. But I would guess that the Secretary had in mind this distinction between willful and nonwillful violations in drafting the legislation where the civil penalties are applied only to willful and repeated violations?

Mr. **Otter**. That is the provision that he is recommending and that is what we have put into writing, yes, sir.

Mr. **Erlenborn**. In substance, the bill that may reach us some day, recommended by the Secretary, would make the employee whole by returning the wages that he or she should have earned if the act were complied with, and provides for disincentives for future violations for those who engage in a willful violation. That seems to me to be a balanced approach, and I think I might prefer that over using the atomic weapon of enforcement, triple damages in every case, regardless of its nature.

Mr. **Otter**. I would like to add that one of the unfortunate results of the passage of time, is that in some cases the employees' wages are lost through portal-to-portal or the statute of limitations. To protect the employees' rights and also to insure justice, the Secretary and we have provided in our draft for suspension of the statute once we have served a letter on the employer that there is a wage payment owed, and during the year following that suspension notice to the employer the statute would not run against the claims.

I think this is in all fairness to both sides because it takes away the haste in getting the case worked out for the Department of Labor and keeps the employee from suffering a loss, not that the delay is intentional on anybody's part. We try to provide against any harm to them from it.

Mr. **Erlenborn**. I may suggest to the Secretary if OMB should delay him much further in getting that legislation up here, you might just send me a copy of it. We would not put the imprimatur of the Department of Labor on it, but we might introduce the bill anyhow, because it seems to me to be a more balanced and reasonable approach, and ought to be considered by this committee.

Mr. **Otter**. Thank you, sir.

Mr. **Miller**. Thank you.

I think there is some concern about what actually happens under current law with the enforcement actions that are taken. I guess that is trying to break down exactly what the disposal of those cases has been and the number of wage and hour actions engaged in last year were how many?

Mr. **Otter**. The number of investigations taken last year?

Mr. **Miller**. Yes.

Mr. **Cohen**. There were 75,000 investigations in all programs completed in fiscal year 1981. You are asking how were they disposed of?

Mr. **Miller**. Were those minimum wage violation investigations?

Mr. **Cohen**. That includes Government contracts also. I believe we have a breakdown of the FLSA only. There were 71,195 FLSA investigations.

Mr. **Miller**. What number of those resulted in findings of violations?

Mr. **Cohen**. There were 30,000 investigations that disclosed minimum wage violations, and 28,000 disclosed overtime violations. We do not have an unduplicated count, and those two numbers are not additive.

Mr. **Miller**. In some cases a single investigation would have turned up both violations?

Mr. **Cohen**. That is correct.

Mr. **Miller**. You told me 58,000 out of 71,000 investigations, you found 58,000 violations?

Mr. **Cohen**. That is establishments. As far as employees who were underpaid, we found 396,000 employees underpaid minimum wages, and 291,000 employees were not paid proper overtime.

I can give you a breakout on the amounts restored which you asked about previously.

Mr. **Miller**. Go ahead with that, if you would, please.

Mr. **Cohen**. For employees, let us start with the establishments. Of the 30,938 establishments found with minimum wage violations, 27,372 agreed to pay the minimum wage, back wages. That is 88 percent of the establishments found in violation. Of the 28,212 establishments found in violation of the overtime provision, 23,955 agreed to restore the overtime wages, or 84 percent of the establishments.

Mr. **Miller**. Could I just interrupt you there? In terms of actual wages returned to the workers, what is the difference of the amount that is returned to workers in overtime violations as opposed to minimum wage violations? Is there a difference in the ratio of wages returned?

Mr. **Cohen**. In overtime this shows that 69 percent of the overtime was agreed to be paid, compared with 60 percent of the minimum wage.

Mr. **Miller**. What amount was actually returned to the employees?

Mr. **Cohen**. In minimum wage that was $31,912,000. That is 60 percent of the $52,861,000 found due.

Mr. **Miller**. When you give us that figure, is it correct for us to assume that that went back to the employee?

Mr. **Cohen**. No; that is a figure which employers agreed to pay.

Mr. **Miller**. What if they didn't pay it?

Mr. **Cohen**. There are employees in there that could not be located; that money would not be paid.

Mr. **Miller**. So, that is not a net figure of losses that have been restored to the employee?

Mr. **Cohen**. That is correct; that is an agreement to pay.

Mr. **Miller**. Any idea what that figure might be? Can we go back and look and see if agreements to pay have been carried out?

Mr. **Cohen**. We frequently do where we question the honesty of the employer. We do not attempt to track in every case where the employer agrees to pay. That involves a great deal of bookkeeping and a great deal of time.

Mr. **MILLER**. Wait a minute. We have a violation of the law here that involves some 685,000 employees, and in the process of enforcing the law we in some cases, in 60 to 70 percent of the cases, we engage in an agreement to pay those employees.

Mr. **COHEN**. That is correct.

Mr. **MILLER**. Two sets of violations; one is for somebody who is claiming that they were improperly reimbursed for overtime on the job, and one set of employees is complaining they did not get the minimum wage.

Mr. **COHEN**. Frequently the same employee is due both minimum wage and overtime.

Mr. **MILLER**. Is there any evidence that one employee might be remaining on the job and the other employee may not be? My theory is an employer who is worried about overtime violations might have a more stable job than in some cases the employee who is worried about whether or not they got the minimum wage. You may be dealing with two different types of employers. I may be wrong.

Mr. **COHEN**. No; I don't think you could distinguish it that way, at least we have never attempted to make an analysis along those lines. We have present employees who are due minimum wage and overtime and former employees who have left, for whatever reason, that are likewise due minimum wage and overtime.

Mr. **MILLER**. So, we now have, of 30,000, I think you say there were 30,000 establishments with the overtime problem and 27,000 of those agreed to restore.

Mr. **COHEN**. That is minimum wage.

Mr. **MILLER**. That is minimum wage, OK. And in the other case you have——

Mr. **COHEN**. That was 28,000.

Mr. **MILLER**. And 28,000 agreed to restore?

Mr. **COHEN**. That is correct.

Mr. **MILLER**. OK. After the agreement to restore is entered into, what happens?

Mr. **COHEN**. We provide official receipt forms which protect the employer from a private 16(b) action. When the employer pays the back wages to the employee, the employee signs the receipt form, the employee gets a copy; the employer gets a copy, and we receive a copy for our files.

Mr. **MILLER**. What percentage of receipt forms do we get to employees who have violations against them?

Mr. **COHEN**. We do not have a record of that.

Mr. **MILLER**. Why do we have the receipts?

Mr. **COHEN**. They are in the investigation file, and if the receipts are not returned within a reasonable time, the compliance officers would follow up. We simply do not keep statistics, but that is not to say that there is no followup conducted.

Mr. **MILLER**. In what number of cases is followup conducted?

Mr. **COHEN**. We would not have statistics on that.

Mr. **MILLER**. Do you have any idea?

Mr. Cohen. No; I do not. I believe GAO was attempting to do some kind of analysis along those lines. I don't recall the figures in their analysis.

Mr. Miller. Let me go back, not to belabor the point with Mr. Otter, but let me go back to your testimony here.

When you talk on page 3 at the top of total fines in fiscal year 1981 to exceed $127.4 million, what is that amount?

Mr. Otter. Found due, in other words, that is the amount in cases like the settlement cases where it's the amount the employer agrees should be paid in cases where it's contested; it's the amount we say.

Mr. Miller. So that is the gross amount that the Department believes is due?

Mr. Otter. Yes.

Mr. Miller. Some of which was arrived at through settlement, some of which is arrived at through allegation of violations that you have made?

Mr. Otter. Yes.

Mr. Miller. So that figure in no way reflects restoration of pay to individuals on behalf of whom those allegations were lodged?

Mr. Cohen. We have two figures; the gross amount found due, which was disclosed as a result of our investigation, and the second figure, which is the amount that our compliance officer negotiated and which the employer agreed to restore to the employees.

Mr. Miller. But when you look at taxes you are always looking for a net, net, net. We are trying to get back to the first net here in terms of what the employee gets back. You have the gross amount of the alleged violations and the agreements to restore. You get that down to the agreements to restore. That is still a gross amount because we have no way of calculating the amount that is actually put back into the aggrieved employee's pocket.

Mr. Otter. That is right.

Mr. Cohen. That is correct. That is not to say we do not follow-up.

Mr. Miller. No; I understand that, but you don't have a figure.

Mr. Cohen. We simply do not have a statistical system that captures that.

Mr. Miller. We do not know, it appears we do not know the extent to which compliance with the agreement to restore is, in fact, carried out.

Mr. Cohen. We do not have an absolute number of how much money is actually paid to the employee.

Mr. Miller. Do we know if there is a threshold in your field offices with the compliance officer that if he knows that there were 25 aggrieved employees he only gets back 12 receipts, does he look into that, or does he need to get back 5 receipts, is there some kind of threshold for auditing these agreements to comply?

Mr. Cohen. No; I don't know that we have a hard and fast number, but the compliance officers will take it upon themselves to locate employees. The employer will frequently return the envelope to us stamped by the post office, "Unlocated; no longer at present address." We will frequently make efforts to locate employees; we run lists in newspapers and various efforts like that to try to locate them.

Mr. **Miller**. You do that for all employees or do you need a dollar amount to do that?

Mr. **Cohen**. No.

Mr. **Miller**. How would you do it? What would make you decide to do it?

Mr. **Cohen**. That is a function at the field office level.

Mr. **Miller**. So there is no policy?

Mr. **Cohen**. The policy is that there should be an effort made to locate employees and to see that the back wages are paid. There are no hard and fast numbers, percentages.

Mr. **Miller**. Do you know what kind of numbers you are finding in your effort to locate them after you get a nonforwardable address back?

Mr. **Cohen**. No; I do not. I will say in cases where we have reason to question the honesty——

Mr. **Miller**. Let me make clear I don't think your job is easy. I am just trying to figure out the steps that are taken and where employees can be helpful and where they are not helpful.

Mr. **Cohen**. Sure. This has been raised by GAO and we have discussed it with them. These steps are very costly, time consuming. It diverts enforcement personnel away from making investigations and trying to locate employees to get the back wages to them. We feel we strike a reasonable balance in those efforts. We have a program with the Mexican consulates in this country where they attempt to locate Mexican nationals.

Mr. **Miller**. Any number there on the numbers of Mexican nationals that have been located?

Mr. **Cohen**. No; I do not have a number.

Mr. **Miller**. Thousands?

Mr. **Cohen**. Yes; I would say so.

Mr. **Miller**. Do you think it's in the thousands; tens of thousands?

Mr. **Cohen**. Probably not; not that we have documented it.

Mr. **Miller**. We have ones of millions working here. I am trying to determine.

Mr. **Cohen**. The other point I did want to make, which our offices frequently do, where for whatever reason we do not accept the employer's promise to restore the back wages, is we have the check sent to our office. We either ask the employer to make out separate checks for each employee, which we then disburse from our local office, or we receive a check in a gross amount and have Treasury checks made out to the employees.

Mr. **Miller**. What kind of threshold does an employer have to cross before that happens to him? You are talking about a very bad operator, right at this point.

Mr. **Cohen**. No; it's strictly a judgment call by the compliance officer and his supervisor, and this procedure is very often used.

Mr. **Miller**. What happens to that group? Minority counsel points out, what happens to the group that goes beyond the voluntary compliance group?

Mr. **Otter**. You mean where——

Mr. **Miller**. Where you have allegations of violations against a group of people who don't enter into an agreement to settle with you, what percentage of those people that you have deemed you have sufficient evidence to file a violation against, what happens to that group; how do they sift through the system?

Mr. OTTER. In other words, where there is a refusal to pay and comply, and we go to the Solicitor and decide which of the cases are going to court and which don't.

Mr. MILLER. Do you know how those break down?

Mr. COHEN. I think typically we refer about 3,000 cases a year to the Solicitor's office and they file legal actions in roughly about half of those cases. Typically, when our compliance officers are closing out an investigation, the first thing they will ask the employer is, Do you agree to change your pay practices and comply in the future? If he does not, we will refer it to the Solicitor's office for an injunction.

Mr. MILLER. He would be a fool if he answered the question in the negative.

Mr. COHEN. Well, they do that because, as Congressman Erlenborn indicated, there are technical types of violations, there are gray areas of coverage and frequently an employer will simply disagree with our interpretation. If the Solicitor's office agrees that our interpretation is correct, in almost every instance they will file for an injunction.

In the remaining cases, where an employer refuses to pay the back wages, we will refer it to the Solicitor's office. If there are substantial amounts of money and employees involved, the Solicitor's Office will make a judgment on whether to file suit.

Mr. GOLDBERG. Mr. Otter, if I might just ask a couple of questions.

Recapitulating quickly, you said in fiscal year 1981 your office engaged in some 71,000 investigations. Of that 71,000, you found minimum wage or overtime violations in about 60,000 establishments?

Mr. COHEN. No. You can't add those numbers. That is duplicated. We do not have an unduplicated number right here.

Mr. GOLDBERG. You say you referred about 3,000 cases to the Solicitor's office. They took up about half of those, about 1,500, and when they took them up, what did they do with them? Did they obtain liquidated damages? How many cases did they obtain civil penalties; how many cases did they obtain injunctive relief and how many cases did they obtain criminal penalties?

Mr. OTTER. In the 1,500 universe you are talking about.

Mr. COHEN. There would be no civil penalties other than for child labor, but I think Mr. Lilly could best respond.

Mr. LILLY. I think we would have to supply that information for you.

Mr. GOLDBERG. Could you; if you would.

Mr. LILLY. Whatever number of actions were brought in 1981.

Mr. GOLDBERG. Let's start with the universe of 71,000 investigations and let's get down to the specifics; how many injunctions, how many criminal penalties obtained, how many sought in each case.

[The information requested follows:]

INFORMATION REQUESTED FROM FRANCIS X. LILLY

During fiscal year 1981, the Wage and Hour Division referred a total of 3,242 FLSA cases to the Solicitor for consideration of legal action. The specific breakdown of referred cases is reflected in the following table:

Contempt	51
Defensive	7
Minimum wage (sec. 6) only	252
Overtime (sec. 7) only	1,123
Both minimum wage and overtime	1,574
Other	235
Total	3,242

With respect to the 51 cases referred for consideration of contempt actions, that number includes both civil and criminal contempt cases, while the 235 cases listed as "Other" includes cases referred for consideration of possible criminal prosecution, cases involving discriminatory or retaliatory discharge or disciplinary actions etc. The source for the above case statistics is the consolidated Computer Report for the Solicitor's Office for fiscal year 1981. A more detailed breakdown of the specific categories of cases is not available from either the Report itself or from the raw data upon which the Report was prepared.

During the same time period, action taken by the Office of the Solicitor on cases referred by the Wage and Hour Division during fiscal year 1981 or on cases previously referred but which were pending during fiscal year 1981 refected in the following table:

Settled before legal action filed	629
Withdrawn at request of wage-hour	111
Transferred to a different regional office of the Solicitor or to another U.S. Government agency	98
Rejected as unsuitable for litigation	507
Litigation concluded	2,083

As with the first table, the source for the above statistics is the consolidated fiscal year 1981 Computer Report. Neither that Report nor its data base can be used to project either the number of injunctions obtained or the stipulations of compliance agreed to in the 2,083 concluded litigation cases. In an effort to approximate such numbers, the Atlanta, Dallas, and Kansas City Regional Solicitor's Ofices were contacted to obtain their best estimate as to the percentage of litigation concluded cases in which injunctions and stipulations of compliance were obtained. Following is an average based upon responses received from the regions: 66 percent of litigation concluded cases where injunctive relief is obtained; and 31 percent of litigation concluded cases where stipulation of future compliance is obtained.

By applying the above percentages to the 2,083 total listed above, we can estimate that 1,375 injunctions (66 percent of 2,083) and 646 stipulations of compliance (31 percent of 2,083) were obtained in fiscal year 1981. As regards the 629 cases which were settled by the Regional Solicitor before legal action was filed, the regional offices were unanimous in stating that virtually every such case would have been settled either upon an assurance of future compliance or a verification of present compliance, or both.

During fiscal year 1981, the Office of the Solicitor filed 1,406 cases (including five defensive suits). The specific breakdown of the 1,406 cases follows:

Contempt	26
Defensive	5
Minimum wage (sec. 6) only	119
Overtime (sec. 7) only	443
Both minimum wage and overtime	672
Other	141
Total	1,406

Fiscal year 1981 restitution totals obtained from the Computer Report are as follows:

Minimum wage—$6,719,819, due 78,699 employees.
Overtime—$9,131,955, due 28,844 employees.
Other—$163,628, due 450 employees.
Total—$16,015,402.

It should be noted that the employee totals for minimum wage and overtime includes duplicates. It should further be noted that DOL has no means of ascertaining precisely how much of the above restitution total was actually received by the affected employee.

Finally, during fiscal year 1981 the Office of the Solicitor recovered $117,031 in the nature of fines, e.g., contempt compensatory fines, penalties and court costs. Statistics are not currently available which reflect specific results in any criminal prosecutions brought under the FLSA.

Mr. **Goldberg**. The other question I have deals with the issue of the amount of the agreed upon refunds, which, in fact, ultimately get to the underpaid workers. The GAO's report, the one we have been referring to, May 28, 1981, contains in it a reference on page 65 to an April 18, 1980, report of the Labor Department Office of Inspector General that revealed that: "Tests of the $59 million of back wages reported by Labor as paid to employees nationwide during fiscal year 1978 can be overstated by as much as one-third."

Do you think that one-third figure still holds true with respect to the amount agreed to be paid versus the amount that is in fact paid?

Mr. **Cohen**. That is based on a very, very limited sample that the GAO conducted.

Mr. **Goldberg**. This is the Labor Department's Inspector General's estimate; not the GAO.

Mr. **Otter**. I gather what you are saying is do we have any reason to think it has changed, regardless of the accuracy of the number. So far as the percentage of employees who actually get to their money and collect it, I have no reason to think that that has increased or is a higher percentage.

Mr. **Goldberg**. So we can say probably two-thirds of the amount of money which employers who have already been found to have violated the act have agreed to pay back, is in fact, paid back.

Mr. **Otter**. Assuming the validity of the first one is still there, I am not going to necessarily agree that is a good survey, but that may be a good beginning point.

Mr. **Goldberg**. I appreciate that.

Thank you.

Mr. **Miller**. Thank you very much for your testimony and time to give us help.

Next the committee will hear from Dr. Rudolph Oswald, director of economic research for the AFL-CIO.

Welcome to the committee.

Your statement will be included in its entirety in the record, and I think that it would be most helpful to the committee, to the extent to which you disagreed or you think there is something we ought to know with respect to what has already been said this morning, that you let us know. That would be very helpful.

So you may proceed as you are most comfortable, but it's obviously helpful to the committee to have you interact with the panels that have gone before.

STATEMENT OF RUDOLPH OSWALD, DIRECTOR, ECONOMIC RESEARCH, THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY JAY POWER, LEGISLATIVE REPRESENTATIVE, AFL-CIO, AND CLARA SCHLOSS, ECONOMIC CONSULTANT, AFL-CIO

Mr. **Oswald**. Mr. Chairman, I appreciate this opportunity to present the AFL-CIO views on this issue.

Accompanying me this morning are Jay Power, of our legislative department, and Clara Schloss, a consultant to the AFL-CIO.

We think it unfortunate that the Congress has had to initiate steps in 1982 to insure that those who violate the Fair Labor Standards Act would be punished and the punishment would be sufficient to deter future violations.

We are also disappointed, as Mr. Erlenborn was, that the administration has not sent up earlier its own recommendations in this regard.

I think there is an important element though that was not mentioned by the previous representative of the administration who testified regarding knowledge and responsibility of employers. Each year over the last 4 years each employer has been notified by the Labor Department of the increase in the minimum wage, the requirement to pay overtime, and each one was sent a poster that is to be posted. So that each time the minimum wage has increased, the employer has been put on notice by the Department of Labor of the basic requirements of the Fair Labor Standards Act to pay the minimum wage and the overtime.

That is essentially a fairly straightforward requirement for most employers.

Most of the problems with extensive regulations deal with exemptions from the minimum wage and overtime requirements. If those had also been limited, I think there would be a sharp decrease in terms the extent of regulations required to identify these exemptions. And the exemptions apply to the "mom and pop" stores about which Mr. Erlenborn indicated his concern. Clearly, they are not covered.

Mr. **Erlenborn**. It depends on how big they get.

Mr. **Oswald**. Yes.

Mr. **Erlenborn**. How successful they are.

Mr. **Oswald**. When pop is very successful, he is covered.

Clearly, at this point, the penalty is no more than the employer doing what he should have done in the first place. It's not even a slap on the wrist because his chances of not being discovered are very great.

The Labor Department currently visits only between 1 and 2 percent of the establishments a year, meaning that the likelihood of being investigated is once every 50 to 100 years, not a very high likelihood of being investigated.

In addition to the speech made by Mr. Donovan that had been mentioned earlier to the Business Roundtable, he communicated with President Kirkland setting forth many of the same items that have been talked about being in an administration bill.

We think it most important that there be a strong deterrent to violating the law. We think that there is sufficient knowledge within the community, particularly the business community, that there is a minimum wage, that the minimum wage is $3.35 an hour currently; that there is an overtime premium pay requirement. To require triple damages, we believe, would clearly provide the deterrent to willful violation of the law that continues to exist in such large numbers. In terms of the number of investigations completed, over a half of them disclose violations.

The findings of the Minimum Wage Study Commission also found that the overall level of noncompliance with the Fair Labor Standards Act is unacceptable. They recommended that Congress should address this issue by attempting to increase the costs of not complying with the Act. I think, Mr. Chairman, your bill is an important step in that direction.

The report of the Comptroller General of the United States also indicated that there was a need for strengthening Labor's enforcement program to deter employers from violating the Fair Labor Standards Act and for improving the Labor Department's ability to have full recovery of back wages illegally withheld from employees.

Your previous hearings have clearly indicated the broad support for this bill, whether it be labor union officials or business. I would particularly like to quote from part of your hearing record in New York by Alex Glauberman, a representative of the Jewelry Manufacturers Association.

I would like to quote as follows: He said:

> We believe that unfair competition created by unscrupulous business would be greatly reduced if offenders were required to pay three times the amount of back wages due . . . Honest and legitimate businesses can only profit by the adoption of this proposal.

The other item that I would like to bring to the attention of the committee is the need to review the economic status of those workers who are the poorest-paid in our country. This year for the first time in the last 5 years, they have not had benefited from a raise in their minimum wage. Many workers, as well as some employers, called the AFL-CIO in January asking what the required increase was for this year. They had come to expect regular increases.

We believe that the Congress should reexamine the concept that this House committee considered in 1977. Indexing the minimum wage would insure that those at the bottom of the wage scale don't fall further behind.

In January of this year the $3.35 minimum wage was only 44 percent of the average wage of non-supervisory workers in the private sector. Each of the preceding 4 years it had been at least 48 percent. We had recommended that the minimum wage be raised in steps to 60 percent of the average wage. This would insure that the minimum wage would reflect what was happening with wages in general.

If workers at the minimum had received increases equal to the changes in the Consumer Price Index since January of 1977, the minimum wage today would be over $4 an hour.

We believe justice for low wage workers demands immediate action to raise the minimum wage. The economy would benefit from the added purchasing power that these increases would provide.

There appears to be a concerted campaign to force a low-wage economy on America. We think what we need is a realistic wage, and that the burden of the economy not be placed on the poorest paid workers. We also believe indexing the minimum wage would be the surest way of bringing about a fair and decent wage floor.

Thank you, Mr. Chairman.

[The prepared statement of Rudolph Oswald follows:]

PREPARED STATEMENT OF DR. RUDOLPH A. OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH, AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, I appreciate the opportunity to present the views of the AFL-CIO on H.R. 6103. We think it unfortunate that the Congress has had to initiate steps in 1982 to insure that those who violate the Fair Labor Standards Act would be punished and the punishment would be sufficient to deter future violations. We had expected the Administration to propose changes last year.

Mr. Chairman, as you may have concluded from your New York hearings on H.R. 6103 there is widespread agreement that the present penalties for violating the provisions of the FLSA not only fail to deter violations but may actually encourage violations. Clearly, the odds against discovery are great and the cost of discovery, if and when it does occur, is little more than a slap on the wrist.

In May of 1981, we were alerted to the fact that the Secretary of Labor intended to propose legislation which would bring about greater compliance with the provisions of the FLSA. Our expectation was based on a communication from Secretary Donovan to President Kirkland in which he outlined several proposals which he felt would "provide just the kind of bite we have needed for many years in this area."

Included in the changes the Secretary of Labor proposed for consideration were the following:

First: civil fines of $2,500 to $10,000 for repeated failure to keep payroll records.

Second: impose additional fines of $2,500 to $10,000 for repeated failure to pay Minimum Wage and Overtime.

Third: clarify Section 16 of the Fair Labor Standards Act to require payment of back wages to the Department of Labor for employees who cannot be located.

Fourth: set the Statute of Limitations at three years for nonwillful violations and four years for willful violations.

Fifth: start the meter running on the Statute of Limitations at the time the investigation is initiated.

On May 22, 1981, President Kirkland responded to Secretary Donovan's letter and commended him for proposing to establish goals which he hoped to reach in enforcing the Fair Labor Standards Act.

In his letter, President Kirkland noted that the changes proposed by the Labor Department were in line with the recommendations contained in a Working Paper of the Minimum Wage Study Commission. This Commission, which issued its final report on May 22, concluded, in part, that: "The Commission views the overall level of noncompliance with Fair Labor Standards Act as unacceptable. It is our view that Congress should address this issue by attempting to increase the cost of not complying with the Act."

While President Kirkland endorsed the steps which the Secretary of Labor proposed to bring about a higher level of compliance, he also expressed concern as to whether this goal could be achieved at the same time as enforcement funds were being cut. He urged that adequate funds be allocated to enforce the Fair Labor Standards Act so as to make clear to all would-be violators that this law has "real teeth."

Mr. Chairman, the Report to the Congress by the Comptroller General of the United States (May 28, 1981) on *Changes Needed to Deter Violations of Fair Labor Standards Act* also makes the case for (a) strengthening Labor's enforcement program to deter employers from violating the Fair Labor Standards Act and (b) for improving labor's ability to recover the full amount of back wages illegally withheld from employees.

Unfortunately, we find it difficult to expect improved enforcement of the Fair Labor Standards Act when the number of compliance officers has been reduced from 1,107 in 1981 to 732 in 1982, a reduction of more than one-third.

We have reviewed the statements presented in the Hearing which you held in New York on this bill on April 26, 1982 and we would like to endorse the following:

"At the present, the rewards of breaking the law are greater than the penalties." (Sol C. Chaiken, President of the International Ladies Garment Workers Union, AFL-CIO)

"The fact that many employers continue to violate the FLSA even after they have been investigated is proof that not only are there no disincentives but the rewards of noncompliance are great!" (John Sweeney, International President of the Service Employees International Union, AFL-CIO)

"I appreciate the opportunity to express our agreement with the conclusions that led you to introduce a bill establishing reasonable penalties for violations of the Federal minimum wage law and our support of measures to deprive noncomplying employers of the profits that come from deliberately violating the law." (Joseph C. Armer, Director, Division of Labor Standards, New York State Department of Labor)

"The penalties provision of the FLSA are simply not up to the task posed by the resurgence of the sweatshop. Penalties actually imposed on shops are simply considered part of the normal 'cost of doing business.' The amount of penalty is the same as back wages owed the workers, so this really isn't a penalty in the first place. And the provision whereby recoveries not claimed by workers are given back to the employer is ludicrous." (State Senator Franz S. Leichter, 29th S.D. Manhattan)

"I am pleased to appear here today to go on record favoring Congressman Miller's Bill H.R. 6103 and hope it will accomplish the result for which it was written. However, should this not deter exploiters of those so easily exploited, then it should be amended even further at some future date and more punitive action be inflicted so that unscrupulous employers will learn that exploitation of the American Worker is deplorable and will not be tolerated." (Arnold Schwedock, Executive Director of the Ladies Apparel Contractors Association, Inc., a trade association, incorporated in the State of New York)

"Here in New York, the jewelry firms that have been found to be in violation of the fair labor laws continue to prosper. Payment of back wages to those who earned it—if they can be located—is an inconsequential penalty for violating the law.

"We believe that unfair competition created by unscrupulous business would be greatly reduced if offenders were required to pay three times the amount of back wages due. . . . Honest and legitimate businesses can only profit by the adoption of this proposal." (Alex J. Glauberman, Jewelry Manufacturers Assoc., New York, New York)

Mr. Chairman, earlier in this statement I said that there was widespread agreement that the present penalties fail to deter violations. The brief extracts listed above represent business, union, and government views and all conclude that passage of the bill is endorsed by fair-minded employers and that the bill would work against unscrupulous employers who undercut even the modest standards presently incorporated in the FLSA.

We urge this Committee to review the findings of the Minimum Wage Study Commission. The Commission, which was created by the Congress in 1977 to help it resolve the many controversial issues that have surrounded the federal minimum wage and overtime standards since 1938, submitted its report to the Congress in May 1981.

Included in the final report of the Commission to the Congress was a recommendation that the statute be amended to reduce the "unacceptable" level of employer noncompliance with the Act. Among the measures the Commission suggested to achieve improved compliance was (1) raise the amount of liquidated damages that should be awarded to employees (2) allowing Class Action suits by aggrieved employees and (3) urging the Department of Labor to focus on the high incidence of noncompliance in the retail and service sectors when determining how to allocate field investigations.

We would also like to call to your attention one other recommendation of the Commission which we view as basic if this statute is to accomplish its purpose. The Commission recommended that the minimum wage be "indexed"—that is, that the level of the minimum wage be adjusted annually to reflect changes in average hourly earnings in the private business sector. The Commission's recommendation for indexing the minimum wage was based on staff findings that such regular and predictable increases would be noninflationary and would help minimum wage workers keep up with inflation while giving employers the opportunity to prepare for regularly scheduled pay increases rather than the sporadic and sometimes unpredictable legislated increases.

The AFL-CIO has long felt that the Fair Labor Standards Act should provide for an automatic adjustment in the level of the minimum wage. In 1977, we urged the Congress to provide for annual increases in the minimum wage and noted that the history of minimum wage legislation demonstrated that despite the best efforts of the Congress, minimum wage setting has been irregular and unsatisfactory.

Although the 1977 amendments to the Act did not include an automatic escalator provision it did provide for annual increases to $2.65 an hour on January 1, 1978; $2.90 on January 1, 1979; $3.10 on January 1, 1980 and $3.35 on January 1, 1981.

By providing for four steps the Congress attempted to insure that the minimum wage would at least keep pace with the estimates for inflation which were projected at the time. While the increases did not keep pace with the sharp inflation which took place over that four year span, the minimum wage was not eroded to the extent that it would otherwise have been.

In January 1982, average hourly earnings of employees in the private sector were $7.55. This means that the minimum wage of $3.35 was equal to only 44 percent of the average wage in January of this year as compared with 48 percent or more in each of the preceding four years.

If the minimum wage had been adjusted in January 1982 to reflect only those changes in the Consumer Price Index which have occurred since January 1981, a minimum wage of at least $3.60 would have been the legal minimum today. If the minimum wage had been adjusted for actual changes in the CPI since January 1977, the wage would have been in excess of $4.00 an hour in January 1982.

Mr. Chairman, we urge that this Committee expand the scope of the bill to include an automatic annual adjustment in the level of the minimum wage tied to wages generally.

Justice for low-wage workers demands immediate action to raise the minimum wage. The economy needs—and must have—the added purchasing power these increases will provide.

There appears to be a concerted campaign to force a "low-wage" economy on America. We reject the philosophy of a low-wage economy. The burden of this administration's economic failures must not be placed on the poorest-paid workers.

Mr. MILLER. Thank you.

Can I assume from your statement that the AFL-CIO supports 6103?

Mr. OSWALD. Mr. Chairman, we believe that it's an important step in the right direction; yes, sir.

Mr. MILLER. I could not agree more with your final statement. I think there is a concerted effort to enforce a low-wage economy in this country. I think more and more people are going to find out what the minimum wage is. I guess it was once called the poor man's union; unfortunately, because of the economic policies, more and more people are going to find that that is the wage that they are going to have offered to them.

I suspect that will also build a constituency in this country to see that the minimum wage, in fact, keeps up with other increases in our society.

Let me ask you, if I might, in the previous statement I did not get to ask a question on it, but there was the suggestion that there was an increase in the enforcement manpower available to wage and hour, and I just wondered, with the $6 million addition that was put in last year, whether you recognize that that is, in fact, the case, or whether or not they have, in fact, fallen below the number of slots that they had previously.

Mr. OSWALD. Our review of the Labor Department records as released indicate that there were 1,107 compliance officers in 1981 and 732 such officers in 1982, or a reduction of one-third.

Mr. MILLER. That is with the increase in funding?

Mr. OSWALD. With the increased funds.

Part of the problem has been that more and more of the compliance officers have been working on the alien work force. The illegal aliens are part of the problem. Frequently, by the time they are able to crack down on employers of illegals, and the employer agrees to pay back wages, the illegals have been shipped back to Mexico or El Salvador or someplace else. At that point, the employer just says, well, I won't do it again, and then he hires a whole new group of people, and they are frequently also illegal aliens.

We support very strongly the provisions for changing the immigration laws contained in the Simpson-Mazzoli bill. We think that that will be the only way really to eliminate the exploitation of illegal aliens by making employers liable for knowingly hiring illegal aliens.

Mr. **Miller**. Again, I would ask if there was some reaction by you to some of the testimony that was given earlier. I just wondered if you had any comments for our benefit. I am not trying to solicit anything. I just want to make sure we proceed from this with a clear record of exactly what the status of compliance is with the law or with the allegations of violations.

Mr. **Oswald**. Mr. Chairman, the Labor Department representatives emphasized the amount of money that was "agreed to be paid," not the amount which was actually paid. One time they did maintain records on how much was actually paid of the total which employers agreed to pay.

Mr. **Miller**. That was when?

Mr. **Oswald**. In the early seventies and earlier. We are very concerned that, if we cut back so many compliance officers, we will seriously undermine the enforcement operation. There is not sufficient data being collected on which to base a judgment on where to expect large violations. Compliance officers are spending most of their time today in responding only to complaints.

Those people who are most exploited are most afraid to complain. The complaints from the exploited generally come only after being discharged from a job. That is hardly the promise of what the Fair Labor Standards Act was intended to accomplish in terms of providing a minimum guarantee. We think that only when the Labor Department has enough staff to scheduled significant number of noncomplaint investigations will there be a better enforcement mechanism.

Mr. **Miller**. Mr. Erlenborn.

Mr. **Erlenborn**. Thank you, Mr. Chairman.

Dr. Oswald, let me thank you for what I consider to be somewhat kind words about the 1977 minimum wage amendments, since the figures in there are of my creation and were contained in the Erlenborn substitute.

It's nice to have sort of a halfway endorsement of them as being somewhat reasonable, which represents a real change in the position of the AFL-CIO from 1977.

Mr. **Oswald**. We had supported the four steps only after it appeared that the choice was between one step and four steps. We recommended indexing then and today because we think that employers would prefer to have regular increases. Decent employers really don't want the minimum wage falling further and further behind.

Mr. **Erlenborn**. You probably found out in 1977 that you were wrong in assuming that employers wanted that regularity. They would be happy, I think, if we never addressed the issue again, many of them.

Mr. **Oswald**. I don't think that is true of fair-minded employers. I think that most decent employers feel they have a responsibility to their employees. They feel that workers are due a living wage just as they feel a responsibility to pay their electric bills or the other bills even when they go up. They know that just as they have to pay more during periods of inflation, their workers have to pay their bills. They appreciate the fact that workers must be compensated in a manner which reflects what is taking place in the economy.

Mr. **Erlenborn**. Of course, they are always free to dc that. This is not a maximum wage; this is a minimum.

Mr. **Oswald**. No, but employers don't always see it that way. It's precisely those workers who have the least power in our society who depend on the requirements of this law. They are a very small minority but it is that 5 percent of all workers who depend on the FLSA for fair and equitable treatment.

I think that it is important that the Congress look toward helping those so that they are not exploited in our society.

Mr. **Erlenborn**. I noted in talking with my counsel that the law currently allows a private right of action by employees. Is it your impression that if we allow for these triple damages that we are going to have more enterprising young attorneys looking for these cases since the amounts involved will be larger, and they might be able to take them on a contingent fee basis.

Mr. **Oswald**. First of all, there is no provision for a class action. That means that there would be individual action.

Mr. **Erlenborn**. Several could join in one suit.

Mr. **Oswald**. I think in most cases these are people who never deal with lawyers, until lawyers go out ambulance chasing.

Mr. **Erlenborn**. I think maybe that is what I am suggesting the treble damages might encourage.

Mr. **Oswald**. If that were the only way for the law to be enforced, I would think that would be a bad way for the law to be enforced. I personally think that Government does have some responsibility to help enforce laws, not just encourage ambulance chasing.

Mr. **Erlenborn**. Let me ask if the Congress should see fit rather than to provide for triple damages to provide for civil penalties as the Secretary has suggested, do you personally or does the AFL-CIO have any feeling about what should be done with those civil penalties, whether they should be deposited in the Treasury, or put into the Secretary's, I hesitate to call it, slush fund, but put in the Secretary's nonappropriated fund account?

Mr. **Oswald**. If I could address the fist part of that first—we think that triple damages are an important element for enforcement of a law where the employer has been notified every year over the last 4 years in terms of his responsibilities. The civil penalites that were spoken of by the Secretary of Labor would only be for repeat violations. We think that there should be a penalty for not obeying the law in the first place.

As to the best use of the money that is recovered, I think that depends upon the amount. I think it is a responsibility of Congress to review whether all should go to the Treasury or some to the Labor Department. I don't believe that Government agencies should be run purely by collecting fines. I think if those finances are a minor part of a Government agency's budget, it may help if an agency is more zealous in enforcement of the law. But, I don't think a budget of the agency should be paid for fully by the finances it collects. I would think that the IRS should be not funded purely by the amount of money that it collects from finding violations of the Income Tax Code.

Mr. **Erlenborn**. I must admit myself to be of two minds about the retention by the Department of Labor. I see generally in Government either no incentives or reverse incentives for people to do what they ought to do. For instance, the GS level of a supervisor goes up as the number of employees supervised goes up, and so supervisors are encouraged to swell their departments. I see this as maybe a good incentive for the Secretary to engage in enforcement if he could have his Department profit by it, and then maybe hire more investigators, and have more collections to make a larger profit. If you could put the profit motive in Government, it might work that way.

Mr. **Oswald**. I think up to a point. It reminds me of some of the problems that have surfaced in spending when the pay police officers depended on the number of arrests that they have made. I am not sure that you really want to have police officers either rigging their radar guns or somehow or other getting a bonus on the basis of how many arrests they have. But you do want the police officers enforcing the law.

I would think that in this case, we would want the enforcement people enforcing the law. But we don't want them to be trigger happy with the radar gun.

Mr. **Erlenborn**. I think you are certainly right there. I would apply the same principle in judging the performance of the Secretary of Labor in Oshkosh, for instance, rather to judge the Secretary's performance or the Department's performance by the dollar volume of finances, we ought to be judging it by the reduction in injuries and deaths. And too often it is the dollar volume of finances that gets the attention rather than the actual improvement in safety in the workplace.

Mr. **Oswald**. Clearly that is the purpose of the law, and clearly the purpose of the minimum wage law is to assure that workers are paid in accordance with the law. If there were no violations, I would think that the law had helped to achieve much of its purpose. But unless you do have some policemen, nobody is going to drive 55 miles an hour.

Mr. **Erlenborn**. You mentioned the Simpson-Mazzoli immigration bill, which I have an interest in. You indicated support for the concept of making it illegal to hire undocumented workers, to use the euphemism that is so often used, and I agree that that is a good direction to go. Has the AFL–CIO taken any position on the bill as a whole or in particular the concept of having a more regularized method of having temporary workers documented and brought into the country for periods of time.

Mr. **Oswald**. First of all, we have supported the basic bill as introduced. There have been some amendments in the last few days that cause us some problems that relate to the area that you are talking about. We thought that, first of all, in terms of employers' sanctions, that employers' sanctions were the only way in the long run that you would be able to deal with the problems of illegal aliens.

You could not have an employer sanction though without the employer having some method of identification. We strongly supported the provisions of identification as embodied in the requirement that after 3 years, the administration would have a counterfeit-proof provision.

In terms of numbers of temporary workers authorized, we believe, when there is 10-percent unemployment in this country, that the case for temporary workers is very, very weak. We believe that there should be much more attention given to retraining workers, to ability to transfer workers and help them move from one section of the country to another as needed. There should not be a basic dependence on H-2's or on some new guest-worker program. We believe that the Braceros program of the late forties and fifties was a dismal failure and Congress wisely rescinded that in 1964. There have been great gains made by farmworkers, particularly in this country, as they have improved their conditions, and have made farmwork a much greater element of an ability to maintain a decent wage for workers and their families. We have made large gains in terms of the support under the Farm Labor Contractors Act, in terms of help for migrant farmworkers and in terms of most of the other elements of H-2 workers, that there have been American workers who are able to do much of the work.

We have been shocked a number of times when construction workers have been brought in from other countries, supposedly to do work that American construction workers were not able or ready to do. We find that very surprising. Currently in this country, as you know, the unemployment rate for construction workers is nearly 19 percent and they are one of the most mobile work forces in our country. We have continued to be concerned with attempts to try and break down the standards that were written into the basic Mazzoli-Simpson bill. Essentially that bill codified the current requirements for obtaining H-2 workers: demonstrate that a shortage exists, that that shortage not be caused by offering rates below that prevailing for that type of work; that attempts have been made to seek American workers and that they have not been found; and last that it be a national search, not just within the two square blocks around the operation. We think those are all necessary to provide the sort of safeguards that one would wish to have.

Clearly an H-2 program for certain specific jobs maybe justified at some particular point as a safety valve. But we think that it must very limited. I am sorry I am so long on an answer, but it is a very complicated field.

Mr. **Erlenborn**. Yes; it is, and a complicated bill and a very, very important issue, I think, to be resolved. It has been unresolved for much too long.

Mr. **Oswald**. We are in full agreement, because we think that it has been under study time and time again. We commend the bipartisan approach of Mr. Simpson and Mr. Mazzoli in their original bill. Both of them were on the Commission that reviewed the issue and held extensive hearings last year and this year, and it is time to move on.

Mr. Erlenborn. Let me just say that I agree with much of what you have said, not all. I don't think that 10-percent unemployment means that the unemployed auto worker or carpenter or plumber is going to go out and pick strawberries or apples or anything else. I think there are areas or types of employment that cannot be filled with these unemployed workers, many of whom are, of course, drawing unemployment compensation, and would rather, and understandably rather, do that then engage in stoop labor or other types of unattractive work.

Mr. Oswald. There is no work in America that we have not found Americans engaged in, including much of the stoop labor. There are large numbers of American citizens who are so engaged.

Mr. Erlenborn. It seems we have to have changes in the minimum wage law so we can let the 13- and 14-year-olds do it. They are Americans all right, but they are the only ones that are willing to go out and pick those strawberries.

Mr. Oswald. I am not sure 16- and 17-year-olds are not also willing nor that 25- and 26-year-olds and 40- and 45-year-olds, and 60- and 61-year-olds aren't willing.

Mr. Erlenborn. Having reached and exceeded that average of 45, let me tell you stoop labor is not attractive at that age at all.

Mr. Oswald. But there are very many who continue to do it in this country. If you do visit the migrant labor camps, they are not all under age 45, and for many that is a way of life, the only way of life that they have known for a long time.

Mr. Erlenborn. Thank you very much.

Thank you, Mr. Chairman.

Mr. Miller. I assume in your discussion of H-2's, you extended the criteria, that current protections would be extended to that group?

Mr. Oswald. Yes. And particularly, Mr. Chairman, I would like to emphasize that the H-2 provision been handled in the past by the Secretary of Labor. We believe that the Secretary of Labor is the person who is most knowledgeable about the types of safeguards that are needed in the two programs. If that were turned over to the Department of Justice, or the Attorney General or to the Agricultural Department, we believe that one would lose the sort of the expertise that only the Secretary of Labor has.

Mr. Miller. That is currently under discussion, right?

Mr. Oswald. That is correct. But in the original Mazzoli-Simpson bill, it assigned those responsiblities to the Secretary of Labor. And there have been discussions of changing that. We believe that only the Secretary of Labor has the sort of information that would be required to provide documentation on who would be available for work and what would be the prevailing rate and the other questions that are involved in the H-2 program.

Mr. Miller. Thank you.

Thank you very much for your testimony and your time.

Next, we will hear from Mr. James O'Hara, former Chairman, Mimimum Wage Study Commission, and also one of our former colleagues.

Jim, welcome to the committee.

STATEMENT OF JAMES O'HARA, FORMER CHAIRMAN, MINIMUM WAGE STUDY COMMISSION

Mr. O'Hara. Thank you, Mr. Chairman, and members of the committee.

As the chairman indicated, I am appearing here today in my capacity as the last chairman of the Federal Minimum Wage Study Commission created by the Congress in the Fair Labor Standards Act of 1977. We submitted our report to the Congress pursuant to the mandate in that act on May 24 of last year.

Specifically, I am here today to testify concerning the conclusions of and work done by the Commission in connection with so-called Mandate J given us by the Congress. Mandate J was that we study the overall level of noncompliance with the act.

Mr. Chairman, inasmuch as I am appearing in such capacity, I would like to ask that there be printed in the record chapter 8 of volume 1 of the findings and recommendations of the Minimum Wage Study Commission which deals with noncompliance and I will today testify on behalf of the Commission.

Mr. Miller. Without objection.

[The information referred to follows:]

Chapter 8

NONCOMPLIANCE WITH THE FAIR LABOR STANDARDS ACT

Mandate J required the Commission to determine the overall level of noncompliance with the FLSA. To meet this mandate, the Commission requested that the Department of Labor's Wage and Hour Division conduct a special survey of over 15,000 randomly selected business establishments to find out to what extent employers are not paying the required minimum wage and time-and-a-half overtime premium.[1],[2] The Commission also analyzed other noncompliance estimates based on the Current Population Survey and reviewed the enforcement provisions of the Act.[3]

Establishment Violations

Violations can be viewed from two general perspectives: the number and percent of establishments violating the law and the number and percent of employees underpaid in violation of the law.

During the final quarter of 1979, 128,000 or 5 percent of the 2.6 million U.S. business establishments subject to the FLSA were estimated to be in violation of the minimum wage provision of the FLSA during the current workweek.[4],[5] Furthermore, 236,000 or 21 percent of the subject establishments with overtime work violated the overtime requirements of the Act. A total of 343,000 or 13 percent of all establishments violated either the minimum wage or overtime provision or both.

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[1] A detailed discussion of the results of the 1979 Noncompliance Survey, including a discussion of the sample, field survey procedures, the sample-drawing procedures, and a copy of the survey instrument, is contained in Sellekaerts and Welch (1981b). A description of the sample design is presented in Sellekaerts (1981). Since the agriculture industry was undersampled, the survey results for this one industry did not meet the Commission's acceptable level of statistical reliability for separate industry reporting. The survey results for agriculture are, however, included within the "all industries" categories reported below, unless otherwise noted.

[2] Since child labor was not one of the Congressional mandates, the Commission did not design the survey to provide accurate estimates of child labor violations. However, child labor violations were reported by field investigators as a by-product of their normal investigative procedures. These findings are not reported in this chapter.

[3] See Welch (1981b) for an analysis of the enforcement provisions of the Act.

[4] The survey was conducted by the Wage and Hour Division's compliance officers. The field investigations took place between August 1979 and mid-April 1980. For those investigations conducted in calendar year 1979, the "current workweek" specified in the results is the payroll week closed just prior to the compliance officer's first on-site visit

Table 8-1 presents the FLSA violation rates by industry and census region.[6] The aggregate industry results show that minimum wage violations are the highest in retail trade (12 percent) and the lowest in mining and manufacturing (less than 1 percent). Overtime violations are heaviest in services, 29 percent, followed by 25 percent in wholesale and 24 percent in retail trade. The retail trade sector of the economy stands out as the primary violator of the minimum wage and overtime provisions of the Act: 24 percent of all establishments in this sector violate either or both of the two monetary provisions of the Act.

Breaking the industry data down by region reveals that 15 percent of the retail establishments in the South violated the minimum wage provision in the current workweek (Table 8-1). The transportation and retail trade sectors had the highest minimum wage establishment violation rates in the non-South. Establishment overtime violations are highest among the South's wholesale trade sector and the non-South's service and retail trade sectors. It is interesting to note that the non-South's total violation rate always exceeds the South's by a slight margin.

There is no clear indication that establishment violation rates have declined because of recent investigations. No consistent pattern emerges as establishment violation rates are compared with the length of time since the last investigation.[7] The majority of Wage and Hour Division enforcement investigations in the past few years have been initiated by employee complaints to the Division, and the evidence suggests that many FLSA violators are recidivists.[8] This evidence is consistent with the observation that the present penalties for violations of the FLSA do not act as a significant deterrent to noncompliance.

The establishment violations re-

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to an establishment. For those investigations in 1980, the compliance officers were required to define the "current workweek" as the workweek completed immediately before December 15, 1979. This was necessary to assure comparability of noncompliance estimates in view of the increase in the minimum wage on January 1, 1980, from $2.90 to $3.10 an hour. Normal compliance-officer procedures call for an investigation that reviews payroll records for a two-year period, the "investigation period." This procedure was followed in the survey.

[5] Since a small proportion of the reported findings were mailed from the field while administrative settlements or litigations were still pending, the estimates reported in this chapter must be considered upper-bound estimates. Final settlements or court awards may be less than those reported by the field investigators.

[6] The regional sample was selected in such a way that South-non-South comparisons could be made for nine SIC industry divisions. The Standard Bureau of Census definition of "South" is used. It includes: Alabama, Arkanas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

[7] Sellekaerts and Welch (1981b), Table 5.

[8] It is the Commission's understanding that this evidence is quite consistent with data soon to be reported by GAO regarding repeated violations of the FLSA by firms previously investigated.

Table 8-1

Percent of Subject Establishments in Violation of
the Minimum Wage and Overtime Provisions of the FLSA,
by Industry and Region in the Current Workweek,
Fourth Quarter 1979

Industry	Minimum Wage			Overtime[1]			Unduplicated[2]		
	Total	South	Non-South	Total	South	Non-South	Total	South	Non-South
All Industries	4.9	4.7	5.0	21.1	19.2	22.1	13.0	12.4	13.3
Mining	0.4	0.4	0.3	8.0	6.8	12.3	5.7	4.9	8.0
Construction	1.0	0.8	1.0	17.5	20.4	16.1	6.9	7.1	6.8
Manufacturing	0.8	1.2	0.7	12.9	12.7	13.0	8.2	9.4	7.7
Transportation and Public Utilities	8.1	0.5	12.4	15.1	7.5	22.3	14.2	4.5	19.6
Wholesale Trade	6.3	2.6	8.1	24.7	30.1	21.8	17.6	16.8	18.0
Retail Trade	11.7	14.7	10.1	24.0	21.7	25.4	23.5	25.5	22.4
Finance, Insurance, and Real Estate	1.2	1.7	0.9	22.5	22.5	22.5	6.5	6.5	6.5
Services	4.2	3.8	4.4	29.3	19.4	34.0	11.7	9.1	12.8

[1] Percent of those establishments subject to the overtime provision which utilized overtime hours in the current workweek.

[2] Since some establishments violated both the minimum wage and the overtime provision during the current work week, an unduplicated count ensures that such establishments are only counted once.

Source: 1979 Noncompliance Survey

ported by the compliance officers for the two-year investigation period are twice as high as those reported for the current workweek. Two-year establishment violation rates were 10 percent compared to 5 percent for the current workweek. Overtime establishment violation rates were 43 percent compared to 21 percent for the current workweek. But when comparisons are made between data from the current workweek and data from the full investigation period, no change is found in the pattern of violation rates among different industries, regions, or lengths of time since the last investigation.

Employee Violations

Of the 56.4 million employees subject to the FLSA, 677,000 employees, slightly over 1 percent, were underpaid in violation of the minimum wage provision in the current workweek (Table 8-2).[9] Two thirds of these underpaid employees were in the retail trade sector while another 23 percent were employed in the service sector. In essence, almost 90 percent of all minimum wage violations occurred in either the retail trade or service sector of the economy.

In the current workweek, slightly over one quarter, 14.3 million, of the employees subject to the overtime pro-

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[9] Since there were 5.2 million employees paid at the minimum wage as determined by the survey, the 677,000 paid in violation of the minimum wage can be expressed as 11.5 percent of those subject employees earning at or below the minimum wage. This is a measure proposed by Ashenfelter and Smith (1979) and critiqued by Sellekaerts and Welch (1981a).

Table 8-2

Number and Percent of Employees Paid in Violation of
the Minimum Wage and Overtime Provisions of the FLSA,
by Industry and Region in the Current Workweek,
Fourth Quarter 1979

Industry	Minimum Wage Violations				Overtime Violations			
	Number of Employees	Percent[1]			Number of Employees	Percent[2]		
		Total	South	Non-South		Total	South	Non-South
All Industries	677,271	1.2	1.0	1.3	595,140	4.2	4.7	3.9
Mining	318	0.0	0.1	0.0	12,565	3.1	3.9	2.1
Construction	6,240	0.1	0.1	0.1	58,402	4.9	4.5	5.2
Manufacturing	4,945	0.0	0.0	0.0	87,865	1.5	1.5	1.4
Transportation and Public Utilities	13,567	0.3	0.0	0.4	28,148	3.2	2.5	3.6
Wholesale Trade	30,417	0.9	0.4	1.0	67,286	5.6	7.1	4.8
Retail Trade	440,969	4.0	4.0	4.0	158,934	8.1	9.9	7.2
Finance, Insurance and Real Estate	12,269	0.4	0.3	0.4	28,951	5.3	6.6	4.7
Services	157,405	1.6	0.7	2.0	141,782	7.1	8.1	6.8

[1] Employees paid in violation of the minimum wage provision divided by all subject employees (times 100)

[2] Employees paid in violation of the overtime provision divided by all subject employees who worked overtime (times 100)

Source 1979 Noncompliance Survey

vision of the FLSA actually worked overtime.[18] Of these employees, almost 600,000 or 4 percent were found to be paid in violation of the overtime provision of the Act. Once again the retail trade and service sectors appear to be the primary offenders. Not only do these two sectors have the highest overtime employee noncompliance rates (8 percent in retail trade and 7 percent in services), but together they account for one half of all employees underpaid in violation of the overtime provision in the current workweek (Table 8-2).

While no extreme regional differences were uncovered, there was a marked difference by size of establishment. The employee overtime violation rate decreased as the employment size of the establishment increased, changing from a high of 18 percent in small establishments with 1 to 9 employees to a low of 0.2 percent in establishments with 1,000 or more employees.

During the two-year investigation period, a total of 5 million employees were underpaid in violation of the monetary provisions of the Act. For both the minimum wage and overtime violations, about four times as many individuals were underpaid during the two-year period as were underpaid in the current workweek. Employee violation rates cannot be estimated for the two-year period since neither the total number of employees subject to the minimum wage provision nor the total number of subject employees working overtime during the whole period is available.

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[18] Survey data were collected on the 56.4 million workers subject to the minimum wage provision, not the overtime provision, of the Act. Since earlier estimates indicate that about 93 percent of those subject to the minimum wage are also subject to the overtime provision (Welch 1981a, Table 1), 52.6 million employees are estimated to be subject to the overtime requirement in the current workweek.

Just over 90 percent of all current workweek employee (as opposed to establishment) violations occurred in establishments for which no record of a previous investigation existed. These establishments had the highest minimum wage employee violation rate, 1.5 percent, suggesting that violators do respond to visits by the Wage and Hour Division compliance officers. This information, coupled with the earlier reported results that establishment violation rates do not appear to vary systematically with the length of time since the last investigation, tentatively suggests that firms may more selectively violate the law after recent investigations.[11]

Back Wages Owed

Violator cost-savings associated with minimum wage and overtime noncompliance are presented in Table 8-3, which shows the estimated back wages owed employees during the current workweek and during the total investigation period of the Survey.

Overtime underpayments owed ($11.2 million) make up almost three quarters of all FLSA monetary violations ($15.1 million), although 15 percent more employees were paid in violation of the minimum wage provision than the overtime provision in the current workweek (Table 8-2). Noncomplying establishments owed an average of $48 for overtime violations and $30 for minimum wage violations during the current workweek while each underpaid employee was owed an average weekly amount of $19 for an overtime violation and $6 for a minimum wage violation. Overtime violations also were greater than minimum wage violations over the two-year investigation (Table 8-3).

These findings might suggest to some that enforcement activities should be concentrated on overtime violations. But this conclusion must be tempered with the recognition that minimum wage underpayments may be relatively more important to minimum wage workers than overtime underpayments are to employees who work overtime. If one accepts the notion that the value of an added dollar to an underpaid minimum wage worker is worth more than an extra dollar to an underpaid overtime employee earning considerably more than the minimum wage, minimum wage enforcement should not be abandoned.

Total FLSA underpayments estimated for the full investigation period were $1.18 million. To put this total in perspective, the Commission estimated the actual amount of back wages that the Department of Labor's Wage and Hour Division uncovered during the same period of time through its normal field investigation procedures.[12] The

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[11] Before drawing hard conclusions from these data, it is necessary to know the standard errors of the estimates. The sample cells are very small with the exception of the "never investigated" category. Since the Employment Standards Administration's Division of Evaluation and Research has not yet supplied the Commission with these needed standard errors, the implications drawn from these particular data must be viewed as tentative.

[12] Estimation of Wage and Hour Division back-wage findings is complicated by the fact that available quarterly reports refer to "investigation period" dollar findings for cases closed during the quarter. Hence, it is necessary to prorate each quarter's reported findings over the previous eight quarters and then sum up all those findings in each of the eight quarters of calendar years 1978 and 1979 that match those of the 1979 Noncompliance Survey.

Table 8-3

Total Back Wages Due (BW), Back Wages Per Violating Establishment
and Back Wages Per Underpaid Employee Paid in Violation of
the Minimum Wage and Overtime Provisions of the FLSA
in the Current Workweek, Fourth Quarter 1979
and During the Investigation Period

FLSA Provision	Current Workweek (Fourth Quarter 1979)	The Two-year Investigation Period (1979 - 1980)
Minimum Wage Violations		
Total BW Due	$3.9 million	$369 million
BW Per Violating Establishment	$30	$1,477
BW Per Underpaid Employee	$5.70	$137
Overtime Violations		
Total BW Due	$11.2 million	$811 million
BW Per Violating Establishment	$48	$1,681
BW Per Underpaid Employee	$18.90	$319
Unduplicated Violations[1]		
Total BW Due	$15.1 million	$1,180 million
BW Per Violating Establishment	$44	$1,907
BW Per Underpaid Employee	$12	$237

[1] Unduplicated refers to the fact that some establishments violate both the minimum wage and overtime provisions just as some employees can be underpaid in violation of both provisions. Adjustments have been made to eliminate such double counting.

Source: 1979 Noncompliance Survey

Commission estimated that the Division found one fifth of the dollar amount of FLSA violations that the 1979 Noncompliance Survey estimated actually occurred during the 1978-79 period.

The Department's FLSA enforcement resources are primarily used to investigate establishments in response to employee complaints. Over the years there has been an increasing tendency to direct some investigations toward areas where there is a high probability of violations. Since annually only about three percent of all establishments subject to the FLSA are investigated, the data above suggest that present Department of Labor resources may be quite effectively allocated.

Earlier discussions of both the establishment and the employee incidence of noncompliance pointed to both the retail trade sector and the service sector of the economy as areas of relatively high violations. Table 8-4 presents additional evidence that should heighten concerns over noncompliance in these two sectors. The retail trade sector accounted for 43 percent of all back wages owed and the service sector 21 percent. Hence, these two industries together accounted for almost two thirds of all minimum wage and overtime underpayments in the current workweek. If policymakers are more concerned with which sectors contain the most underpaid employees, an even stronger case could be made for allocating enforcement resources toward these two sectors, which contain over seventy percent of all underpaid employees (Table 8-4).

If field investigators act as a deterrent to noncompliance, we would expect that the average back wage owed per noncompliant establishment would be smaller the shorter the

Table 8-4

Percent Distribution of Back Wages Owed Employees Underpaid in Violation of Both the Minimum Wage and Overtime Provisions of the FLSA and the Distribution of All Underpaid Employees by Industry in the Current Workweek, Fourth Quarter 1979

Industry	Distribution of Back Wages Owed[2]	Distribution of Underpaid Employees[3]
All Industries[1]	100.0	100.0
Mining	2.4	1.6
Construction	6.9	5.1
Manufacturing	6.1	7.5
Transporation and Public Utilities	4.7	3.3
Wholesale Trade	10.4	7.8
Retail Trade	43.[illegible]	48.0
Finance, Insurance & Real Estate	5.1	3.2
Services	21.4	24.0

[1] Excludes agriculture.

[2] Contains both minimum wage and overtime violations.

[3] Underpaid employees are an unduplicated count -- i.e., those individuals paid in violation of both the minimum wage and the overtime provision are only counted once.

Source: 1979 Noncompliance Survey

time period since the last Wage and Hour Division investigation. The data are not wholly consistent with this expectation. The Commission is once again left in doubt as to the deterrent effect of existing FLSA enforcement procedures. The absence of effective penalties for either minimum wage or overtime violations may encourage continued noncompliance by establishments that already have been investigated.

The Noncompliance Survey estimated that employers agreed to restore $631 million or 54 percent of the total back wages owed during the investigation period to 70 percent of the employees found underpaid. Those unfamiliar with the problems associated with the present enforcement procedures are usually amazed at the relatively low ratio of money returned to money owed.[13] These survey results, however, are only slightly less than recent Department of Labor collection ratios. The 54 percent figure does suggest a need for new policies to strengthen enforcement of the FLSA.

"3(m)" Violations

Employers are not necessarily in violation of the basic minimum wage provision of the law when they pay subject employees an hourly wage less than the prevailing minimum. This is because section 3(m) of the Act allows an employer to deduct from the minimum wage payment the cost of certain food, lodging, and other expenses customarily furnished to employees. The cost of meals furnished restaurant employees is one example of a 3(m) allowance. Violations of the minimum wage provision occur when employers incorrectly compute the amount of such deductions (credits to the employer) or take a credit when none is allowed. An example of a deduction that is not allowed is a charge to the employee for an employer-supplied uniform when the employee's effective wage after such a charge falls below the prevailing minimum wage. Section 3(m) also specifies that in 1979, the year of the Noncompliance Survey, employers of tipped workers could deduct 45 percent of the minimum wage as a tip credit. Hence, employers of tipped employees who paid a wage less than $1.60 per hour [$2.90 - (0.45) X ($2.90) = $1.60] were in violation of the minimum wage provision.[14]

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[13] A discussion of these problems, including a detailed analysis of litigation problems under Sections 16 and 17 of the Act, is contained in Welch (1981b).

One unique feature of the 1979 Noncompliance Survey is that for the first time 3(m) minimum wage violations can be distinguished from all other minimum wage violations.[15] Table 8-5 shows that 71 percent of the total number of minimum wage violations arise from 3(m) violations, that is, arise from deductions from the minimum wage which are not permitted under the law. Again, the retail trade and the service sectors appear to be the major violators. Seventy-seven percent of all minimum wage violations in retail trade and almost 81 percent of the violations in the service sector are associated with 3(m) violations. These two industries account for almost all the 3(m) violations.

There clearly is a major enforcement problem associated with 3(m) violations in the retail and service sectors of the economy. The problem could be solved in several ways ranging from the complete elimination of all 3(m) credits to more precise rules and regulations associated with allowable 3(m) credits. It is essential to ensure that all compliance officers are completely familiar with the detailed regulations and to disseminate these regulations widely to employees as well as employers. It is impossible to determine from the data whether the 3(m) violations reflect ignorance of the law or willful violations.

In order to determine the relative dollar significance of 3(m) minimum wage violations, the average weekly amount owed each employee because of a 3(m) violation was computed and compared to the average amount due employees from all other minimum wage violations in the current workweek. The average weekly back wages owed were about $2.70 per employee for 3(m) violations and $12.50 per employee from all other minimum wage violations.

While most current workweek minimum wage violations are 3(m) violations, in dollar terms 3(m) violations represent only one fifth of the average amount owed employees from all other types of minimum wage violations.[16]

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[14] The tip credit was reduced to 40 percent as of January 1, 1980. The minimum wage was raised to $3.10 as of January 1, 1980, and further increased to $3.35 as of January 1, 1981.

[15] A detailed discussion of the types and causes of minimum wage and overtime violations is contained in Welch (1981a).

[16] The latter conclusion applies equally to both the retail trade and the service sectors despite the above-average incidence of 3(m) violations reported in these two sectors. The retail trade's 3(m) violation back wages due, $2.75 per employee, is 21 percent of back wages owed because of other minimum wage violations. In services the average weekly amount owed employees due to 3(m) violations is $2.65 per employee, 23 percent of the average amount owed for other minimum wage violations.

Table 8-5

Number of All Minimum Wage Violations, "3(m)" Minimum Wage Violations and Proportion of "3(m)" Violations to All Minimum Wage Violations, in the Current Workweek, Fourth Quarter 1979

Industry	All Minimum Wage Violations	"(3m)" Minimum Wage Violations	"(3m)" Violations As a Percent of All Minimum Wage Violations
All Industries	677,271	480,238	70.9
Mining	318	0	0.0
Construction	6,240	927	14.9
Manufacturing	4,945	180	3.6
Transportation and Public Utilities	13,567	0	0.0
Wholesale Trade	30,417	8,724	28.7
Retail Trade	440,969	339,664	77.0
Finance, Insurance and Real Estate	12,269	484	3.9
Services	157,405	127,418	80.9

Source: 1979 Noncompliance Survey

Policy conclusions from this analysis might call for little concentration on 3(m) violators if the object is to seek out large back-wage settlements. But if the object is to assist the largest number of underpaid employees, 3(m) enforcement efforts should be strengthened. On the other hand, eliminating "3(m)" credits would achieve both objectives simultaneously. Decision-makers will have to weigh carefully their various objectives and the relative costs and benefits of alternative enforcement efforts.

Demographic Characteristics

Table 8-6 presents information on the demographic charateristics of those workers underpaid in violation of the minimum wage provision of the Act during the current workweek by sex, race and age. These data should be viewed with some caution since the investigators determined these characteristics by looking at the employees and by name identification. This was necessary because Wage and Hour Division procedures do not call for compliance officers to inspect employer information on the race, age, and sex of employees except in cases of suspected child labor violations.

Women suffered almost three fourths of all minimum wage violations, although they represent only slightly more than two fifths of total employment and about two thirds of all low-wage workers. CPS estimates of noncompliance among women in the fully subject sector of the economy are roughly consistent with the Noncompliance Survey findings.

The Noncompliance Survey determined that teenagers, who make up one third of all low-wage workers, accounted for one third of the minimum wage violations; however, they represent only 8 percent of total employment. This finding is also roughly consistent with the CPS-based estimates presented in Table 8-6. These results suggest that teens, like women, suffer a disproportionately large share of minimum wage violations relative to their share

Table 8-6

Percent of Employees Paid in Violation of the Minimum Wage Provision of the FLSA and the Average Hourly Wage Received by and Average Weekly Underpayments Due Employees Paid in Violation of the Minimum Wage Provision by Sex, Race and Age in the Current Workweek, Fourth Quarter 1979

Demographic Characteristics		Distribution of Employees		Average Hourly Wage	Average Weekly Amount Underpaid
		NCS[1]	CPS[2]		
Sex					
	Female	74.0	68.9	\$2.43	\$4.38
	Male	26.0	31.1	\$2.55	\$9.03
Race					
	Black	5.4	23.8	\$2.56	\$9.53
	Hispanic	3.3	8.6	\$2.69	\$6.49
	Other	91.3	67.6	\$2.44	\$5.33
Age					
	Under 20 years	34.2	24.7	\$2.65	\$5.64
	20-64 years	64.2	67.1	\$2.35	\$5.32
	65 years and over	1.6	8.2	\$2.29	\$15.73

[1] NCS Noncompliance Survey.

[2] CPS Current Population Survey estimates derived in the manner discussed in Sellekaerts and Welch (1981a). Data are 3-month averages for the fourth quarter of 1979. Data in the remaining two columns are from the Noncompliance Survey.

Source 1979 Noncompliance Survey and Current Population Survey

of total employment.

Blacks appear to present a different situation. While they form about 10 percent of the employed labor force and about 15 percent of low-wage workers, they account for 5 percent of the minimum wage violations, according to the Noncompliance Survey. This finding is not substantiated by the CPS estimates reported in Table 8-6, which indicate that blacks represented almost one quarter of the underpaid minimum wage employees. These conflicting results may be due in part to measurement error associated with the Noncompliance Survey's procedures, which were based to a large extent on the examination of payroll records. Perhaps not all underpaid employees were correctly classified by race by the compliance officers.

If one examines the average weekly amount underpaid (the last column of Table 8-6) instead of the individuals underpaid, a somewhat different picture emerges. Women, who experienced a disproportionately large extent of noncompliance, were underpaid on average only about half as much as men in the current workweek.[17] Blacks appeared to be underpaid an average weekly amount greater than whites, and those few workers 65 years of age or older who were underpaid, were underpaid the largest average amount of any demographic group.

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[17] Differences in hours worked per week between women and men would account for women being underpaid less in the current workweek than men while receiving a lower hourly wage rate.

Conclusions

Five percent of all establishments were estimated to be in violation of the minimum wage provision in the current workweek while 21 percent of the establishments with overtime work were not paying premium payments for overtime hours. Minimum wage noncompliance affected just over 1 percent of those employees subject to the Act. The incidence of overtime violations among employees working overtime was considerably higher, 4.2 percent.

Whether observing minimum wage or overtime violations, establishment or employee violation rates, current workweek or investigation period data, two sectors continually stood out as significant violators of the law--the retail trade and the service sectors. Over half of all the establishments violating the monetary provisions of the FLSA, almost two thirds of all current workweek underpayments, and over 70 percent of all underpaid employees are in these two sectors of the economy.

The value of back wages owed to those paid in violation of the minimum wage provision represented about 8 percent of the total employment earnings of minimum wage workers. The Department of Labor's recent investigations have detected about one fifth of the dollar amount of FLSA violations.

Females and teenagers experienced a disproportionately high degree of minimum wage violations relative to their employment in the labor force. Illegal minimum wage credits, 3(m) deductions, accounted for more than 70 percent of all minimum wage violations. In dollar terms, such violations on average represented 20 percent of the value of other types of minimum wage violations.

Recommendations

The Commission views the overall level of noncompliance with the Fair Labor Standards Act as unacceptable. It is our view that Congress should address this issue by attempting to increase the cost of not complying with the Act. To this end, the Commission recommends that Congress consider raising the liquidated damages that may be awarded in successful FLSA litigation. Furthermore, Congress ought to consider increased self-enforcement through, for example, legislation to allow class-action suits by aggrieved employees. Such a possibility would have the dual advantage of sponsoring self-enforcement and simultaneously increasing the cost of noncompliance to violators of the Act. Lastly, the Commission believes that the high incidence of noncompliance within the retail trade and service sectors may provide useful information for the Department of Labor as it considers the best means of allocating FLSA field investigators.

The Commission did not develop reliable data on child labor violations since it is not a part of our mandate to study child labor. But the Commission believes that exploitive child labor is such a pernicious practice that it should always have a high priority in the Department of Labor's enforcement activities.

The Commission notes that the Department of Labor has reported to Congress that over the past four years the number of workers subject to the Fair Labor Standards Act has increased about 16 percent; simultaneously, the number of the Department's FLSA field investigators was reduced 4 percent. This evidence, coupled with the noncompliance findings of the 1979 Noncompliance Survey, leads the Commission to conclude that the noncompliance problem cannot be resolved without concerted effort. It is the Commission's view that changes in the enforcement provisions as recommended above, increases in investigative resources and/or a directing of enforcement resources toward those sectors identified as significant violators will encourage increased compliance with the Fair Labor Standards Act.

Selected References

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______________. "FLSA Enforcement Policy Issues." In Volume III, this Report (b).

Mr. O'HARA. I also want to draw the committee's attention to volume 3 of the report of the Minimum Wage Study Commission which contains the research done by the Minimum Wage Study Commission staff and outside contractors dealing with the subject of noncompliance. Although it is quite extensive, it may be that you would want to republish that volume in connection with your hearings. I still receive requests for copies of our report which are no longer available.

Mr. ERLENBORN. You mean you have run out of money; the Commission can't print?

Mr. O'HARA. The Commission died and was buried last May.

Mr. ERLENBORN. We are going to have to watch our dollars here, too.

Mr. O'HARA. Let me, Mr. Chairman, if I could, briefly summarize our findings in the area of noncompliance.

We found that 5 percent of all establishments covered by the act were estimated to be in violation of the minimum wage provision in the workweek the survey was done, while 21 percent of the establishments with overtime work were not paying premium pay for overtime hours. That is quite an extensive amount of noncompliance.

Minimum wage noncompliance affects just over 1 percent of the employees subject to the act. The incidence of overtime violations among employees who actually worked overtime are considerably higher, 4.2 percent.

Whether observing minimum wage or the overtime violations, establishment or employees violation rates, current workweek or investigation period data, we did not find the kind of regional differences that had previosuly been estimated and commented upon, but we did find two business sectors that stood out as signficiant violators of the law. They were the retail trade and service sectors.

Over half of all of the establishments violating the monetary provisions of the Fair Labor Standards Act, almost two-thirds of all current workweek underpayments and over 70 percent of all underpaid employees are in these two sectors of the economy.

I might add that a very, very large portion of those violations were found in eating and drinking places.

That gets to one of the points I am going to make in a minute having to do with the section 3(m) violation problem.

The value of back wages owed to those paid in violation of minimum wage provisions represented about 8 percent of the total employment earnings of minimum wage workers. The Department's recent investigations have detected about one-fifth of the dollar amount of Fair Labor Standards Act violations.

Females and teenagers experience a disproportionately high degree of minimum wage violations relative to their employment in the labor forces, but not relative to their presence among persons earning at or near the minimum wage and obviously most violations occur in that category of employees.

Illegal minimum wage credits, the so-called 3(m) deductions, accounted for more than 70 percent of all minimum wage violations. In dollar terms, such violations on average represented 20 percent of the value of other types of minimum wage violations. The average 3(m) violation amounted to $2.70 a week per employee. The average non-3(m) violation amounted to about $12.50 per week per employee. So while the vast majority of violations were in the 3(m) category, the more signficiant violations were in the non-3(m) category.

Mr. **Erlenborn**. What does 3(m) stand for?

Mr. **O'Hara**. Section 3(m) sets out the deductions permitted from minimum wage for food, lodging, et cetra and for tips.

Mr. **Erlenborn**. I wanted to be sure it was not Minnesota Mining & Manufacturing.

Mr. **O'Hara**. Good point. I thank the gentleman.

The Commission viewed the overall level of noncompliance with the Fair Labor Standards Act as unacceptable. It was the Commission's view that Congress ought to address the issue by attempting to increase the cost of not complying with the act.

To this end, the Commission recommended that Congress consider raising the liquidated damages that may be awarded in successful Fair Labor Standards Act litigation.

Furthermore, the Commission recommended that Congress consider increased self-enforcement through, for example, legislation to allow class action suits by aggrieved employees. Such a possiblity would have the dual advantage of sponsoring self-enforcement and simultaneously increasing the cost of noncompliance to violators of the act.

Lastly, the Commission suggested that the high incidence of noncompliance within the retail trade and service sectors may provide useful information for the Department of Labor as it considers the best means of allocating FLSA field investigators.

The Commission did not develop reliable data on child labor violations, since child labor was not one of the mandates that the Commission was asked to examine.

But the Commission believed that exploitive child labor is such a pernicious practice that it should always have a high priority in enforcement activities.

In one sense the Commission sort of dropped the ball. That is to say, in trying to limit our inquiry, we made a decision early on that.

We were not going to make any separate studies of the 3(m) problem. The 3(m) problem was perceived by us at that time as a tip-credit problem. We were familiar with the consideration within the Congress of the tip-credit issue and we were of the opinion that it was not a lack of information that kept the Congress from reaching consensus on that issue. We thought that the Congress was overwhelmed with information on the subject, but that differences of opinion kept the Congress from reaching a resolution or consensus of the issue. We didn't think there was anything we would be able to add to that.

We received the results of our noncompliance survey rather late in the Commission's life and discovered, for the first time, that the overwhelming majority of violations were in the 3(m) exemption area.

By that time, it was too late for us to go back and initiate a separate series of studies and examinations of the 3(m) exemption area.

So we contended ourselves in our final report by saying:

> There clearly is a major enforcement problem associated with 3(m) violations in the retail and service sectors of the economy. The problem could be solved in several ways, ranging from the complete elimination of all 3(m) credits to more precise rules and regulations associated with allowable 3(m) credits.

It is an area I would very much like to see the subcommittee look into more extensively. I think you could cut down the total number of coalitions very considerably by making some changes in 3(m).

Mr. MILLER. You are not making any judgment as to whether the violations were willful or nonwillful?

Mr. O'HARA. Commissioner Robinson, who was one of our most diligent members, was of the opinion that these 3(m) violations were almost entirely of the nonwillful variety.

However, as we stated in our report, and I quote again "It is impossible to determine from the data whether 3(m) violations reflect ignorance of the law or willfull violations." That was not a subject that the Commission really investigated. We simply tried to determine the extent of noncompliance and we did not develop the kinds of data that would tell us whether those violations were willful or nonwillful.

I wish to emphasize my belief that the class action lawsuit could solve a lot of compliance problems. It has been used increasingly as a way of permitting citizens to enforce their rights when the possible recovery of any one citizen is so small in amount as to preclude him from taking effective private action.

I learned long ago not to rely on princes, and I think it is a difficult problem when one must rely on the vagaries of the appropriations and budget processes, and upon the enforcement policies of whatever administration happens to be in power and its priorities for scarce resources. You can't wholly rely upon a government agency that from time to time can only be described as demoralized by what they see as a lack of appreciation of their work. On the other hand, you can't expect an underpaid worker who may be out of pocket for, let's say, $12 a week for 50 weeks, hire a lawyer, or to go around and organize all of his fellow employee's to sign a legal form authorizing the lawyer to join them in a suit and so forth.

I think permitting class action lawsuits would result in greatly improved enforcement of the Fair Labor Standards Act.

Mr. Chairman, thank you for giving me the opportunity to appear before your committee. I would be happy to try to respond to any questions.

Mr. **Miller**. Let me just state, and you can venture an opinion if you so desire to, but earlier testimony by Mr. Otter was that only 1,500 cases went to trial, so to speak, where you could impose liquidated damages out of tens of thousands of violations. I just wondered, given that figure, whether you still think the liquidated damages is a reasonable remedy.

Mr. O'**Hara**. One of the problems is that the incentives for settlement are so great as the case proceeds that very few cases actually result in the award of liquidated damages.

Frankly, I think increased liquidated damages is a step in the right direction. But there are more effective changes that the committee could consider.

Mr. **Miller**. Mr. Erlenborn?

Mr. **Erlenborn**. I don't recall the exact figure, Jim, but you mentioned that the vast majority of violations of the minimum wage were in the retail and service establishment area.

Mr. O'**Hara**. That is correct.

Mr. **Erlenborn**. I think you used a figure of 70 percent, something like that.

Mr. O'**Hara**. Yes.

Mr. **Erlenborn**. What percent of minimum wage level employees are employed in that area? My thought is that there are many industries, businesses that just don't hire minimum wage employees; there are certain types of industries and businesses that do, and that might explain the reason for the high concentration in this area, because that is where the minimum wage employees are.

Mr. O'**Hara**. I would agree.

Mr. **Erlenborn**. We don't have many minimum wage employees.

Mr. O'**Hara**. There are two reasons that I would think that the violations are more concentrated in this area. One is that there is, as the gentleman from Illinois pointed out, a much larger percentage of employees at or near the minimum wage in retail and service than there are in other industries, for instance, manufacturing, mining, et cetera. Consequently, you are going to have more violations.

Second, the 3(m) area of exemptions applies primarily to the retail industry and especially to eating and drinking establishments. So that is where you are going to have most of the violations. I don't think it has anything to do with whether employers in that field are more or less law abiding than any other type of employer.

Mr. **Erlenborn**. It is pretty clear if someone is drawing straight wages, whether they are getting the $3.35 an hour or not. It may not be quite clear to the employee or employer whether they are getting the minimum wage when it is a combination of tip credit, lodging, food, and a paycheck.

Mr. O'**Hara**. Yes; that's right. Likewise, the fact that the average wage in manufacturing is very much higher than the Federal minimum wage, means that even if there were miscalculations, they are unlikely to put you in violation of the minimum wage. It is like the old story—you can't get there from here.

Mr. **Erlenborn**. Thank you very much.

Mr. **Miller**. Thank you very much for your testimony, and again for your time, Jim; we appreciate it.

Mr. **O'Hara**. Thank you.

Mr. **Miller**. The committee will stand adjourned and it is expected that we will attempt to mark up this hearing a week from today, May 19, 11:23.

[Whereupon, the subcommittee adjourned, to reconvene at 11:23 a.m., Wednesday, May 19, 1982.]

[Material submitted for inclusion in the record follows:]

American Hotel and Motel Association,
Washington, D.C., May 14, 1982.

Hon. George Miller,
Chairman, House Subcommittee on Labor Standards, House Education and Labor Committee, Washingtion, D.C.

Dear Mr. Chairman: Enclosed is a copy of our statement that, if possible, we would like included in the hearing record related to H.R. 6103.

Thank you.

Sincerely,

Albert L. McDermott,
Washington Representative.

Enclosure.

The American Hotel & Motel Association is a federation of hotel and motel associations located in the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, having a membership in excess of 8,200 hotels and motels accounting for over one million rentable rooms. Inclusive in our membership are all of the major hotel and motel chains.

H.R. 6103 would amend the Fair Labor Standards Act of 1938 to provide that an employer who violates section 6 or 7 of that act shall be liable to the employee for three times the amount of wages involved in the violation and to require the payment of the penalty to the Government when no worker can be located.

AH&MA opposes this legislation because we believe that present law is an adequate deterrent to violations and, also, because we believe that most violations are technical in nature and inadvertent. We contend that most violations are minor and occur because the law is very technical for a small businessman and because the law has many unresolved grey areas where even the best intentions can lead to unintended violations.

The premise of H.R. 6103 seems to be that present law is not enough of a deterrent to employers to comply with the Fair Labor Standards Act. It was stated at a subcommittee hearing that, "all agree that the current law provides little to discourage unscrupulous employers from exploiting defenseless workers." Probably no law, no matter how stringent, would be enough to discourage unscrupulous employers, of which we believe there are very few, but, we emphatically disagree that the penalties that presently exist under the FLSA are not a deterrent to violators of the law.

We believe, also, that as in most issues there are two sides to every story. The one day of committee hearings in New York and the one day of hearings in Washington, D.C., were both held with little notice to the employers who would be most affected by this type of legislation. No similar retail or service industry employer testified at either hearing. The problems in the jewelry industry are not, in general, similar to the problems in the restaurant or hospitality industries.

At the subcommittee hearing in New York, it was stated that an employer who does not comply with the wage and hour law is given the ". . . lightest of sentences. The worst thing that could happen to a lawbreaker is that he or she has to pay what should have been paid all along. The best thing that could ever happen is that the lawbreaker gets to keep the profits of the crime." In our opinion, that is just not true. For example, under present wage and hour law one of the worst things that could happen to an employer is that the employer could be forced to pay double the amount of back wages involved going back over a three-year period—plus attorney's fees. In the case of a willful violator, there are additional penalties involving fines up to $10,000 or imprisonment up to six months, or both. In addition, under 16(b) an employee can bring his or her own suit against the employer and seek liquidated damages and under 16(c) the Secretary of Labor can bring an action against an employer and also seek liquidated damages (double the amount of back wages). Finally, under 16(c) if the Secretary is successful in his action, any sums of money not paid to an employee because of an inability to do so "shall be covered into the Treasury of the United States"—and not returned to the employer. In our opinion, these are significant penalties, of significant deterrent force.

Hotels and motels, in our experience, are anxious to comply with the law. Our members dislike wage and hour investigations and are very concerned about hefty back wage liability. They fear investigations not because they are knowingly violating the law but because the law is complicated and has many grey areas and even the most law-abiding employer can make a minor technical mistake.

We oppose H.R. 6103 because it fails to recognize all of the technical and borderline questions involved in complying with the act. There are many areas (such as Regulation 541, and in the entire tip area where we must rely on employees' reports to us), where an employer honestly and in good faith feels he is complying with the act and the regulations and the information provided by Counsel and by the Department of Labor. In many, many instances involving highly technical and close factual situations where employees are highly paid, the Department of Labor has held that the employees failed to meet the technical tests and requirements for exemption through inadvertent violations thereby exposing the employer to legal liability for thousands of dollars under the present FLSA. This condition results in the exploitation of employers based on technical unintentional violations. This is in sharp contrast to the "sweatshops" situation, for example, where violations are usually not inadvertent.

The FLSA presently imposes harsh and unfair conditions on employers whose violations are inadvertent. The Portal-to-Portal Act, for example, extended in 1966 the statute of limitations from two years to three: "a cause of action arising out of a willful violation may be commenced within three years after the cause of 'action' accrued."

The 5th Circuit Court in *Coleman* v. *Jiffy June 20WH* Cases 321, page 323 with respect to "willful stated:

"The entire legislative history of the 1966 amendments of the FLSA indicates a liberalizing intention on the part of Congress. Requiring employers to have more than awareness of the possible applicability of the FLSA would be inconsistent with that intent. Consequently, we hold that employer's decision to change his employees' rate of pay in violation of FLSA is 'willful' when, as in this case, there is substantial evidence in the record to support a finding that the employer knew or suspected that his actions might violate the FLSA. Stated most simply, we think the test should be: Did the employer know the FLSA was in the picture? . . ."

Thus, what presently exists is a three year statute of limitations in almost every case because of the Court's liberal definition of "willful," plus a potential of double back wage liability. In the child labor area the penalites are even more severe—$1,000 for each violation.

Additionally, it was said at your subcommittee hearing in Washington that it is sometimes in the employers' interest not to keep records. The idea is that with little or no records the Wage and Hour Division would not impose the full back wage liability on an employer. Nothing could be further from the truth. We emphasize to our members over and over again in our seminars and in our book, Federal Wage & Hour Standards for the Hotel-Motel and Restaurant Industries, the importance of keeping records. The only way an employer can ever even defend a wage and hour investigation is by having adequate records. The Wage and Hour investigator is likely to impose a worst case situation of back wage liability unless the employer has adequate records to defend himself.

We believe that before there is drastic legislative change, the case should be made for widespread noncompliance of the FLSA. As a Commissioner of the Minimum Wage Study Commission (MWSC) said, "Nearly three out of four cases of noncompliance do not involve outright hourly wage underpayments at all. Instead, they represent miscalulations of highly technical FLSA exemptions." It is important to reiterate a few other points made by Commissioner Robinson.

The vast majority of employers, over 95 percent of all firms, are in complete compliance with all provisions of Federal minimum wage requirements.

98.8 percent of all covered workers are paid wages in total compliance with the minimum wage law.

Over 70 percent of the suspected incidents of minimum wage noncompliance uncovered by the survey involved amounts averaging less than 55 cents per day.

Also, the majority of the MWSC found that "the employee overtime violation rate decreased as the employment size of the establishment increased, changing from a high of 18 percent in small establishments with one to nine employees, to a low of

0.2 percent in establishments with 1,000 or more employees". This supports our contention that the complicated and often arbitrary nature of the FLSA leads to minor technical violations primarily by small businesses.

We believe that by simplifying various aspects of the Wage and Hour Law there would be far less technical noncompliance. We also believe that the Wage and Hour Division in its investigations should concentrate on those few unscrupulous employers who constantly break the law rather than concentrate on small businesses who may have committed inadvertent violations.

AMERICAN RETAIL FEDERATION,
Washington, D.C., May 17, 1982.

Hon. GEORGE MILLER,
Chairman, Subcommittee on Labor Standards, Committee on Education and Labor, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the nation's retailers, the American Retail Federation urges you to reconsider H.R. 6103, calling for treble wage payments as liquidated damages in Section 16 of the Fair Labor Standards Act.

The retail industry is justifiably concerned over this legislation because it would change what is essentially a civil penalty provision into a punitive measure: it would apply to all violations, whether intentional or unintentional.

We understand that the Administration is preparing a bill which reflects Labor Secretary Donovan's recommendations in this area. We urge the subcommittee to hold further hearings when the bill is introduced.

Sincerely,

DONALD F. WHITE, *Vice President.*

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation is a nonprofit organization of more than three million families in 48 states and Puerto Rico, financed by dues paid voluntarily on an annual basis. Farm Bureau member families include at least three-fourths of the commerical farmers and ranchers in the country and an estimated 85 percent of the 700,000 agricultural employers.

While farmers who employ less than 500 man-days of labor during any quarter of the preceding year are exempt from the minimum wage requirements of the Fair Labor Standards Act, nearly half of all hired farmworkers are covered by the Act. They are employed on farms and ranches that do not qualify for the exemption.

Like other employers, most farmers are law-abiding citizens who seek to stay in compliance with all laws, including the Fair Labor Standards Act and the required minimum wage.

It may be true that the Act needs to be amended to provide a greater deterrent to those employers who deliberately and repeatedly fail to pay the minimum wage, but we believe the remedies proposed in this bill go too far.

As we understand the provisions of the bill, it proposes that employers who violate sections 6 and 7 of the Act, pertaining to wage and hour requirements, would be subject to an action brought by the Secretary of Labor to force the employer to pay three times the unpaid wages due an employee; and further, if the Secretary is unable to locate the underpaid worker, the monies collected are to be paid to the Treasury.

A significant part of agricultural employment involves seasonal jobs with a high rate of turnover and with close supervision difficult to maintain. In a frenzied atmosphere, in which employers are dealing with highly perishable crops, it is nearly impossible to maintain careful wage and hour records in every instance. Most hired farmworkes are paid more than the minimum wage through the piecework pay system; but errors do occur, in spite of the best intentions of employers.

It would be unfair and unjust to penalize an employer as provided in this bill, where the violation is unintentional. Any increase in the existing penalty should take into consideration whether the violation was willful or intentional, and whether a pattern of abuse can be demonstrated.

Farmers have experienced widespread legal actions, financed by the funding recipients of the Legal Services Corporation, alledging wage and hour violations of small amounts of money. In these cases, another penalty—not mentioned in the discussion of this legislation, namely legal costs—is placed upon the employer. Many of these claims have no factual basis and many are rejected by the courts; but the employers must spend considerable sums of money to defend themselves against the allegations. Many of these lawsuits involve class actions, in which individual workers are not aware that a violation has occurred or that a lawsuit has been filed on their behalf.

Under these circumstances, we think it would be poor public policy for the Congress to provide that violations of the wage and hour requirements of the Act be addressed by requiring the payment of triple the amount of wages due and that the money penalties be paid into the Treasury if left unclaimed by workers.

We appreciate the opportunity to submit our views on this proposed legislation.

ASSOCIATION OF GENERAL MERCHANDISE CHAINS, INC.,
Washington, D.C., May 27, 1982.

Representative GEORGE MILLER,
Committee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE MILLER: After only two days of hearings and without testimony from any major employers' groups, the Subcommittee on Labor Standards has reported out H.R. 6103, which would subject employers to severe new wage-hour enforcement procedures.

On behalf of the Association of General Merchandise Chains, Inc. (AGMC), let me ask that the full Committee defer action on proposals to create new mechanisms for enforcing the Fair Labor Standards Act (FLSA) until the Administration has presented its proposal in this area. A ranking Department of Labor witness has stated that this would be transmitted to the Committee in the near future.

AGMC represents 125 retail companies operating more than 20,000 discount, variety, dollar and family center stores. Our members range in size and include not only many of the nation's largest retail chains, but also companies active in one or more regions of the country or in a few localities. AGMC member company stores are found in every state of the nation and last year accounted for over $34 billion in sales.

Any legislation dealing with FLSA enforcement should be directed at serious, intentional violations of wage-hour regulations, rather than at inadvertent, technical or *de minimis* infractions. H.R. 6103 does not make this necessary distinction; as a result, it would needlessly penalize employers who seek in good faith to comply with wage-hour rules.

It is necessary to note that the vast majority of employers expend great efforts attempting to comply with a wide range of often complex wage-hour rules. Studies undertaken by the Minimum Wage Study Commission, and discussed extensively in the minority report of Commissioner S. Warne Robinson, reveal that 98.8 percent of all workers covered by the Fair Labor Standards Act are paid in total compliance with the Act. Moreover, the overwhelming majority of all FLSA noncompliance is inadvertent, generally involving small sums and often caused by highly complex wage-hour rules subject to changeable bureaucratic interpretations.

By seeking to apply its new penalty (three times the amount of liability determined by the Wage-Hour Division) to all employers, H.R. 6103 makes no provision for employers who act in good faith or even those who rely upon incorrect advice given by the Wage-Hour Division of the Department of Labor. In addition, the bill eliminates the good faith defenses that current law provides in liquidated damage actions. If enacted, H.R. 6103 will thus penalize employers, particularly small businesses, who make every good faith effort to comply with complex wage-hour regulations.

The bill also requires that all claims, lawsuits and backpay awards be channeled through the Department of Labor. The Department has not sought, and in all likelihood, could not effectively administer this additional authority.

Full Committee action should follow an examination of the Department of Labor's forthcoming proposals, and a thorough review of the adequacy and effectiveness of its current powers and enforcement activities. Moreover, further consideration of H.R. 6103 would allow major employers' groups sufficient time to present their views on an issue of great concern.

For these reasons, I urge the Committee to defer action on H.R. 6103, so that it can give full consideration on the views of the Administration and employers on this important issue and eliminate the serious problems that the bill, in its present form, would cause employers attempting in good faith to comply with wage-hour regulations. Thank you for your consideration.

Sincerely,

EDWARD T. BORDA, *President.*

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